Supreme Court of the United States

OCTOBER TERM, 1945

No. 800

H. LESLIE QUIGG,
Petitioner

vs.

CHARLES O. NELSON,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA AND PETITION TO DISPENSE WITH PRINTING OF RECORD, OR, IN THE ALTERNATIVE, TO PRINT AN ABBREVIATED RECORD.

E. F. P. BRIGHAM,
G. A. WORLEY and JACK [illegible],
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Of Counsel.

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vs.

CHARLES O. NELSON,
Respondent

PETITION FOR WRIT OF CERTIORARI

To the Honorable The Justices of the Supreme Court of the United States:

H. LESLIE QUIGG respectfully petitions for a writ of certiorari to review a decision of the Supreme Court of Florida decided July 24th, 1945, reversing a judgment of ouster of the Respondent, Charles O. Nelson, as Chief of Police of Miami, Florida, and reinstating the Petitioner to said office, rendered by the Dade County Circuit Court in favor of the Petitioner herein, which decision, *together with the Petitioner's petition for rehearing and order of the Supreme Court of Florida dated September 10th, 1945, denying the same, are attached hereto as Appendix "A".

A.

Summary Statement of Matter Involved

1. Petitioner, for many years prior to April 10th, 1944, when he was suspended by the City Manager, held office as Chief of Police of Miami. By virtue of the Miami Charter

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**Nelson v. State, ex rel Quigg* (decided July 24, 1945), ...Fla....., 23 So. (2d) 136.

the Chief of Police holds office during good behavior and is subject to removal by the Miami City Commission, only after suspension by the Miami City Manager for specific reasons, among which are "neglect of duty" and "incompetency." On the night of March 29th, 1944, many union bus drivers of public transporation buses of Miami and Miami Beach, assertedly in protest of the failure of the Municipal Judge of Miami to release on appeal bond one of their fellow union drivers that day incarcerated by order of the Municipal Judge for assault and battery, did suddenly assemble and abandon 100 of their buses at the Courthouse in Miami, so as to constitute: (1) a serious traffic hazard and congestion; (2) inconvenience to the many bus passengers enroute at the time; (3) suspension of the public transportation system of two municipalities; (4) a dangerous condition likely to result in injury to surrounding persons and property through disorder and violence.

The Petitioner, summoned by police headquarters from his home after he had retired for the night, arrived with reasonable dispatch on the scene after the buses had been so assembled and abandoned. There the Petitioner was reliably informed and reasonably believed that at twelve o'clock on the same night, unless the controversy was peacefully settled, the unionized municipal water employees intended, in sympathy with the bus drivers, to *stop* work, resulting in the citizens in Miami being entirely without water. The Petitioner immediately took charge of the situation. Drawing upon his police experience of many years, he ordered his police officers to keep cool and calm and to keep a line of traffic open, if possible, while he proceeded to ascertain the cause and the steps necessary to relieve the tense emergency. For this purpose, he immediately went into conference with the union leaders and ascertained that they had created this emergency situation because of their asserted inability to obtain the release on bond of one of their union members then in jail. After being so advised, the Petitioner secured the promise of the union leaders to end the emergency as soon as they were successful in posting an appeal bond for their incarcerated union member. In one hour and

twenty minutes, by the peaceful and lawful means of assisting the union leaders to post an appeal bond with the Circuit Court Clerk, whom the Petitioner had summoned to the Courthouse for the purpose, the Petitioner settled the controversey without disorder, bloodshed or property damage, and dispersed the buses on their scheduled routes, resulting in resumption of public transportation of the two municipalities of Miami and Miami Beach and clearing the City streets, and thereby avoiding, as Petitioner reasonably believed, stoppage of the municipal water supply.

The Petitioner acted without any corrupt motive. His actions were dictated by his honest belief and judgment that what he did was the best way to prevent a riot and property damage in this severe emergency. He bona fide believed he had the lawful privilege to act in the manner he did under Section 301 of the Municipal Code of Miami which regulated traffic and provided for the enforcement of its provisions. Section 301 provided that "in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, or when necessary to protect property, officers of the Police or Fire Divisions may direct, as conditions may require, contrary to the provisions herein contained." Furthermore, both the City Manager and the Director of Public Safety, (the Petitioner's immediate superior officer), were fully conversant with the manner and means which the Petitioner was adopting to settle the controversy and to dissolve the emergency, and the Director of Public Safety that night approved, in the presence of the City Manager, the Petitioner's settlement of the controversy.

Unlike the Petitioner, the City Manager had no previous experience with an emergency of this kind. (1) He admitted that it was a matter of opinion as to what was the expedient thing to do, (2) and that one could with honesty and good faith do as the Petitioner had done during this emergency. (3) Law enforcement officers of great experience in strikes

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(1) Vol. II, Exhibit A, Page 309.
(2) Vol. II, Exhibit A, Page 295.
(3) Vol. II, Exhibit A, Page 295.

and emergencies of this kind testified that in their opinion as police officers that the Petitioner exercised good judgment in his handling of the emergency. H. J. Mellon, police inspector for many years of Pittsburgh, Pennsylvania, so testified (4). Phillip Trembley, for twenty years on the Detroit police force so testified (5). Edward Hoppe, police officer of Buffalo, New York and Norfolk, Virginia, and the Captain of Miami's auxiliary police so testified (6). Petitioner himself testified that it was discretionary with him to use his judgment in an emergency. (7) Veteran police officers on the Miami Police Force testified that Chief Quigg used good judgment. Lt. Fred E. Bratt, with nineteen years of experience as a Miami traffic officer so stated. (8) Traffic Sgt. C. H. Richardson, with eighteen years' experience on the Miami Police Force so testified. (9)

While the Petitioner was engaged in making an investigation immediately after the night of March 29th, 1944, of those responsible on that night for the emergency situation which they created, the City Manager launched an independent investigation of his own, in his office, assisted by the Director of Public Safety, four City Attorneys, and the County Solicitor (the State prosecuting officer for Dade County, Florida, where Miami is located), which lasted continuously until April 10, 1944, on which date he suspended Petitioner without even consulting with him concerning this matter. The City Manager refused to permit Petitioner to participate in the investigation which he was conducting; handicapped the Petitioner's investigation by tying up on subpoena and examing witnesses in his office needed by the Petitioner to fix responsibility; by instructing police witnesses summoned before him not to discuss the matter with anyone including the Petitioner; and by failing to make avail-

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(4) Vol. IV, Exhibit A, Pages 846-849.
(5) Vol. IV, Exhibit A, Page 891.
(6) Vol. IV, Exhibit A, Page 868.
(7) Vol. III, Exhibit A, Page 753.
(8) Vol. III, Exhibit A, Pages 702-703.
(9) Vol. III, Exhibit A, Page 651.

able to the Petitioner at any time any of the testimony or evidence assembled by the City Manager so Petitioner could use the same to prosecute any offenders which the City Manager's investigation revealed.

2. Under the Miami charter the City Manager is the municipal head of the city government. He has power to control all departments of the City, including the Department of Public Safety which consists of a director, the chief of police and fire, and the subordinate police and fire officers of Miami. The City Manager has exclusive jurisdiction to suspend the Chief of Police. The City Commission of Miami has exclusive jurisdiction to try the Chief of Police only on the charges of suspension preferred by the City Manager. Prior to suspending Petitioner, the City Manager ruled, during his investigation on advice of the City Attorney (who by charter provision is the "prosecuting attorney of the Municipal Court"), that, inasmuch as the County Solicitor intended to prosecute the bus drivers for violating State laws with respect to street blocking and the Florida "no strike" law, that they should not be prosecuted by the City for violating municipal ordinances and to do so would be "prosecution." For that reason no attempt to prosecute the bus drivers has been made by any municipal officer, including the Respondent, Charles O. Nelson, who was appointed Chief of Police shortly after Petitioner was removed on May 25th, 1944, and who has been continuously acting as Chief of Police since September of 1945.

3. On April 10th, 1944, the City Manager suspended the Petitioner upon nine charges. Upon Petitioner's motion to quash all the charges, the City Commission, consisting of five members, quashed charges No. 5 and 8. At the conclusion of Petitioner's trial the City Commission found, either by a unanimous vote or a vote of four to one, the Petitioner not guilty of charges No. 2, 3 and 6, but, by a three to two vote, found the Petitioner guilty of charges No. 1, 4, 7 and 9, and thereupon removed him from office and deprived him of his property rights and pension acquired during his many years of service as Chief of Police of Miami.

The nine charges preferred by the City Manager against Petitioner read as follows:

> "1. You are guilty of neglect of duty by reason of your neglect and failure, as Chief of Police in the Division of Police of the City of Miami, Florida, to enforce the ordinances of said City and the criminal statutes of the State of Florida at the time of violations thereof committed in your presence and under your observation at and during the time of a strike of bus drivers in said City on the night of March 29, 1944.
>
> 2. You are guilty of neglect of duty by reason of your neglect and failure, as Chief of Police in the Division of Police of the City of Miami, Florida, to give orders or instructions to the officers and other personnel of said Division of Police to enforce the ordinances of said City and the criminal statutes of the State of Florida, during or subsequent to the violations thereof committed at and during the time of a strike of bus drivers in said City on the night of March 29, 1944.
>
> 3. You are guilty of misfeasance in the office of Chief of Police in the Division of Police of the City of Miami, Florida, by reason of the fact that, in violation of your oath of office, you devoted your time and your energies at and during the time of a strike of bus drivers in said City on the night of March 29, 1944, to meeting the demands of the leaders of the drivers who were violating in your presence and under your observation the ordinances of said City and the criminal statutes of the State of Florida, and in aiding and abetting said leaders to effect the release from the City jail of a prisoner who had been lawfully convicted in the Municipal Court of said City and had been lawfully sentenced to imprisonment in said jail.
>
> 4. You are guilty of neglect of duty by reason of your neglect and failure, as Chief of Police in the Division of Police of the City of Miami, Florida, to cause or to bring about the apprehension, arrest and punishment of any or all of numerous persons who violated the ordinances of said City and the criminal statutes of the State of Florida at and during the time of a strike of bus drivers in said City on the night of March 29, 1944.

5. You are guilty of neglect of duty by reason of your neglect and failure, as Chief of Police in the Division of Police of the City of Miami, Florida, to take any action or measures of any kind which would prevent at any future time a recurrence of a public emergency and of violations of law similar to those which prevailed at and during the time of a strike of bus drivers in said City on the night of March 29, 1944.

6. You are guilty of failure to obey orders given by proper authority by reason of your neglect and failure, while serving as Chief of Police in the Division of Police of the City of Miami, Florida, to obey and carry into affect orders to enforce the traffic ordinances of said City, given to you by the City Manager of said City on the night of March 29, 1944, at and during the time of a strike of bus drivers in said City.

7. You are guilty of incompetence as Chief of Police in the Division of Police of the City of Miami, Florida, by reason of the fact that you have permitted said Division of Police to fall into and be in a state of disorganization, disunity, discord and inefficiency.

8. You have become and are unfit to serve as Chief of Police of the City of Miami, Florida, for the reason that you have lost and do not have the confidence and respect of the public of said City.

9. Your acts of commission and of omission which are set forth and described in the above and foregoing grounds for your suspension constitute conduct unbecoming a police officer of the City of Miami, Florida, and render you unfit to serve as Chief of Police in the Division of Police of said City."

4. On May 4th, 1944, during the trial of Petitioner's case before the City Commission, said Commission, by a three to two vote, passed a resolution granting Petitioner's motion to quash charge No. 7, and charge No. 7 was accordingly stricken from the City Manager's specification of charges preferred against the Petitioner. Among others, the grounds of Petitioner's motion to strike were that charge No. 7, and its bill of particulars, alleged no facts but merely vague conclusions and generalities against which the Petitioner could not fairly

defend because he was not adequately notified of any facts constituting his asserted incompetency; that the charge was stale and infected with laches; that the charge was not germane to the alleged bus strike which occasioned Petitioner's suspension and operated unfairly to prejudice, hinder and delay the trial of the bus strike charges. On May 5th and 6th, 1944, the Miami Herald, a morning newspaper published in Miami which was admittedly hostile to Petitioner and had openly advocated his removal from office, published two editorials admittedly designed and intended to prejudice Petitioner's trial by influencing the City Commission to restore charge No. 7 against the Petitioner. These editorials particularly intimidated Commissioner Hosea, who had cast the deciding vote to strike charge No. 7 against Petitioner. Admittedly operating under the influence, intimidation and duress of this newspaper, and notwithstanding that the Commissioner declared when he moved to reinstate charge No. 7 against Petitioner that he honestly believed he did the right thing, when he voted to strike this charge, Commissioner Hosea nevertheless, on the next trial session of the Petitioner after these editorials were published and after the City Manager had rested his case against the Petitioner, namely, on May 8th, 1944, moved, and secured the passage of his motion by a three to two vote, including his own, that charge No. 7 be reinstated against Petitioner. This was done over Petitioner's protest and without the City Commission rescinding its previous resolution striking charge No. 7 from the City Manager's specification of charges against Petitioner. Petitioner promptly moved to disqualify Commissioner Hosea on the ground of prejudice, and supported his motion by accompanying affidavits, as required by the Florida law, but this motion was promptly denied by the City Commission, and Commissioner Hosea, at the conclusion of Petitioner's trial, voted to remove the Petitioner on said charge. Again Petitioner moved to disqualify Commissioner Hosea when later, as a result of his questioning of the Petitioner, he brought on a bitter controversy between himself and the Petitioner concerning this Commissioner's interference with the Police Department and his intoxication in the City Manager's office, but the

City Commission refused to grant Petioner's motion to disqualify Commissioner Hosea and Commissioner Hosea refused to recuse himself from Petitioner's trial on either of Petitioner's motions therefor. Except for Commissioner Hosea's vote for removal, the Commission would have been equally divided on the question of whether the Petitioner was guilty of the charges upon which he was removed and whether he should have been removed on these charges, which would have resulted in Petitioner's reinstatement to office.

Section 26 of the City Charter pertaining to the suspension and removal of the Chief of Police reads as follows:

> "The City Manager shall have the exclusive right to suspend the Chief of Police and Fire Chief for incompetence, neglect of duty, immorality, drunkenness, failure to obey orders given by proper authority, or for any other just and reasonable cause. If either of such chiefs be so suspended the City Manager shall forthwith certify the fact, together with the cause of suspension, to the Commission who within five (5) days from the date of receipt of such notice, shall proceed to hear such charges and render judgment thereon, which judgment shall be final."

Petitioner contended under this Section that the charge once having been stricken by the City Commission, could only be restored by the City Manager and not by the City Commission, since the City Manager alone had power to prefer charges.

By decision of the Supreme Court of Florida, Miami police officers have a property right in their offices protected by the Fourteenth Amendment of the United States Constitution:

> *". . . . . public position and the emoluments thereof is property that one may not be deprived of without due process. . . . . .

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*"*Dan D. Rosenfelder, as Director of Public Safety, etc., et al v. C. O. Huttoe* (Decided December 14, 1945), ...So.....;

Also:
DuBose v. Kelly, 132 Fla. 548, 181 So. 11.

> Under our system of jurisprudence, depriving one of his substance, whether it be lands or chattels or public position is a serious matter and should not be permitted, except under strict requirement of the law when due process is observed."

Petitioner's quo warranto information alleged:

> . . . . . that the attempted reinstatement of said Charge No. 7 by said City Commission against the Relator, and the removal of the Relator from his office on said charge No. 7, constitutes taking and depriving him of his property rights of office, and his pension rights to which he is lawfully entitled without due process of law, contrary to the 14th Amendment of the Constitution of the United States.

The Circuit Court of Dade County, Florida, in ousting the Respondent, Charles O. Nelson, and restoring Petitioner to his office, held:

> "From the record, the Court here and now finds, concludes, decides, adjudicates, and rules, that the conviction of H. Leslie Quigg, Relator, and his removal from office, described in the record, were each unreasonable, unjustified, contrary to right and justice, illegal, unconstitutional, and without foundation in fact or law, and were of no legal significance, importance, or consequence whatsoever, and were null and void acts."

In his petition for rehearing, Petitioner without avail specifically called to the attention of the Supreme Court, in Ground No. 2 thereof, that he had been denied a fair and impartial trial by the City Commission under the Fourteenth Amendment of the United States Constitution on charge No. 7 by reason of the matters complained of herein.

5. Neither by common law nor by Statute of Florida does the Mayor, who presided at the trial of the Petitioner, have power to administer oaths to witnesses appearing before the Commision. Nevertheless, over the objection of the Petitioner, he alone administered the witnesses' oaths to the City Manager's witnesses, while the witnesses of the Respondent were sworn by a notary public. At the conclusion

of the City Manager's case, and after he rested, Petitioner moved for a directed verdict on the ground that none of the testimony given against him by the witnesses for the City Manager was given under the sanctity of an oath, but this motion was denied by the City Commission. The sanctity of an oath is essential to due process. In his quo warranto information, Petitioner claimed this lack of a witness oath administered to the City Manager's witnesses denied him a fair trial. He specifically called this to the attention of the Supreme Court in Ground No. 1 of his petition for rehearing and claimed the benefit of the Fourteenth Amendment to the United States Constitution, without avail.

6. The City Commission found the Petitioner guilty of not enforcing *Chapter* 21968, Laws of Florida for 1943, prohibiting, on pain of criminal prosecution, members of labor unions striking without a majority vote of its membership. In reversing the Circuit Court, which found Petitioner not guilty of this alleged neglect of duty, the Supreme Court of Florida expressly held, on July 24th, 1945, that there was sufficient evidence before the City Commission to convict the Petitioner of not enforcing this "no strike" act, and specifically held that the members of said bus drivers union were, on the night of March 29th, 1944, engaging in an "unwarranted, unofficial and unlawful strike".* Yet the Supreme Court of Florida, on October 5th, 1945, in the case of *State, ex rel. Frazier v. Coleman,* ** (habeas corpus action to release the President of the bus driver's union when prosecuted by the County Solicitor of Dade County for the same incident), discharged Frazier from custody because the Supreme Court then held that he had not violated the identical "no strike" law, inasmuch as the bus drivers, when they parked their buses at the Courthouse, were not participating in a "strike", but a "demonstration" to which the Statute was inapplicable. In other words, the Supreme Court of Florida sustained the

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**Nelson v. State, ex rel. Quigg* (July 24, 1945), 23 So. (2d) 136, at 137.

***State, ex rel. Frazier v. Coleman* (Oct. 5, 1945), 23 So. (2d) 477.

removal of the Petitioner because he failed to enforce a State law which the Supreme Court later specifically held, on the same occurrence had not been violated.

7. Section 24 (a) of the Miami charter reads:

> "The Chief of Police or any policeman of the City of Miami, may arrest without warrant, any person violating any of the ordinances of the City committed in the presence of such officer, and when knowledge of the violation of any ordinance of said City shall come to the said Chief of Police or policeman, not committed in his presence, he shall make affidavit before the Judge or Clerk of Municipal Court against the person charged with such violation, whereupon, said Judge or Clerk shall issue a warrant for the arrest of such person."

The record is undisputed that Petitioner did not see any bus drivers violate any law by illegally parking their buses, as the buses were parked and the bus drivers scattered in the crowd of five hundred or more people assembled around the Courthouse before the Chief arrived. Arrest upon affidavit and warrant requiring proper evidence through investigation was, therefore, essential. The Florida Statute of Limitations on all crimes allegedly committed by the bus drivers in their demonstration was and is two years.* The time limit set by the City Manager in his testimony for Petitioner's action against the bus drivers was an indefinite one to be controlled by whether the delay in prosecution would be so long that the Petitioner would "let the evidence get away from him" (Transcript Testimony, Page 331). The City Manager had recorded prior to his suspension of the Petitioner all evidence taken by him in his investigation of the "demonstration", but failed to make it available to the Petitioner or to inquire what progress Petitioner had been able to make in his own investigation before suspending him on April 10th, 1944, not only for not arresting the bus drivers prior to that time but by bringing about their punishment

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*Section 932.05, Florida Statutes Annotated.

as well. (See Charge No. 4 quoted above). The Supreme Court of Florida ignored this feature of the case and based their ratio decidendi in their opinion against Petitioner that Petitioner "knuckled under to the intimidating demands and requirements of those whose conduct evidenced the fact that they would supplant law and order with mob violence".* In doing this the Florida Supreme Court denied Petitioner a fair trial and deprived him of his property right of office without due process of law because the City Commission had acquitted the Petitioner of charge No. 3 which alleged in substance this very same thing. In convicting the Petitioner upon a charge on which the City Commission had acquitted the Petitioner, the Florida Supreme Court deprived the Petitioner of his property rights of office without due process of law and denied him a fair trial, as Petitioner pointed out to the Supreme Court, without avail, in Ground No. 5 of his petition for rehearing.

8. Previously the Supreme Court of Florida held that the removal by the City Commission, composed of five members, of a Miami municipal officer, where the charter was silent on the required vote of the Commission to remove the officer, required more than a three to two vote by the applicable general law which was made by reference a part of the City Charter of Miami, and which required a two-thirds vote of the City Commission for the removal of a municipal officer.** In his quo warranto information Petitioner claimed the benefit of this provision because he was found guilty and removed by a three to two vote of the Commission. In failing to give him the benefit of this Florida Statute***Which they previously held to be applicable in a similar case, the Supreme Court of Florida denied the Petitioner the equal protection of the law and deprived him of his property rights without due

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*_Nelson v. State, ex rel. Quigg_, 23 So. (2d) 136 138.

**_State, ex rel. Gibbs v. Bloodworth_, 134 Fla. 369, 184 So. 1.

***_Section_ 165.18, Florida Statutes Annotated.

process of law, contrary to the Fourteenth Amendment of the United States Constitution.

B.

Statement As to Jurisdiction

Jurisdiction is invoked under Title 28, U.S.C.A., Section 344 (b) (Judicial Code, Section 237 (b) as amended by the Act of February 13, 1925).

The Judgment of the Supreme Court of Florida was rendered July 24, 1945. Application for rehearing, timely filed, was denied September 10th, 1945.

By order of Honorable Hugo L. Black, Associate Justice of the Supreme Court of the United States, dated December 6th, 1945, time for filing petition for certiorari herein was extended to and including February 5th, 1946.

Jurisdiction of the Court is invoked because the judgment of the Supreme Court of Florida, in reversing the Circuit Court which found the removal of the Petitioner from office to be constitutional, so plainly and substantially departed from the fundamental principles upon which our Government is based, that it can with truth and propriety be said that, if the judgment be suffered to remain, the Petitioner would be deprived of his property rights of office and pension and denied the equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States within the rule announced in *Wilson v. State of North Carolina, ex rel., Caldwell,* 169 U. S. 586, 18 S. Ct. 435, 42 L. Ed. 865.

Jurisdiction is also invoked because the judgment of the Miami City Commission removing the Petitioner from his office of Chief of Police, which judgment was reversed by the Circuit Court but affirmed by the Supreme Court of Florida, was not induced solely by evidence and argument in open court and the law applicable thereto, but by public

print during Petitioner's trial before the City Commission, which interferred with the course of justice by premature statement, argument and intimidation, resulting in the Petitioner thereby being denied a fair and impartial trial before said Commission and thus being deprived of his property rights of office and pension without due process of law, contrary to the Fourteenth Amendment to the United States Constitution and within the rule announced by this Court in *Patterson v. Colorado*, 205 U. S. 454, 27 S. Ct. 556, 51 L. Ed. 879; *Potter v. Dowd*, 146 Fed. (2d) 244.

Jurisdiction is further invoked on the ground that the Supreme Court of Florida, in its decision and judgment, necessarily passed upon and decided adversely to the Petitioner his claim, asserted in his quo warranto information (Tr. 20), that he had been deprived of his property rights of office and pension rights, contrary to the Fourteenth Amendment to the Constitution of the United States, even though the language of the opinion of the Supreme Court of Florida is not expressly to this effect.

Petitioner plainly asserted his claim to the protection of the Fourteenth Amendment to the United States Constitution, and alleged that the action of the City Commission in purporting to reinstate Charge No. 7 against the Petitioner and removing him upon said charge violated said Amendment. The demurrer which was filed to the quo warranto information (ground 34 thereof), challenged this feature of the quo warranto information and asserted that the reinstatment of said charge was constitutional (Tr. 42). The Trial Judge, in overruling the demurrer, specifically held that the action of the City Commission in removing the Petitioner was unconstitutional (Tr. 57). This order was assigned as error by the Respondent, Nelson (Tr. 74), and the Supreme Court of Florida, in its opinion reversing the Trial Judge and his final judgment of ouster, necessarily passed upon and determined this matter adversely to the Petitioner. The following cases support jurisdiction:

Adams v. Russell, 229 U. S. 353, 57 L. Ed. 1224;

White River Lumber Co. v. State of Arkansas, ex rel., Applegate, 279 U. S. 692, 73 L. Ed. 903;

Geo. O. Richardson Mach. Co. v. Scott, 276 U. S. 128; 72 L. Ed. 497;

Southwestern Bell Tel. Co. v. State of Okla., 303 U. S. 206; 82 L. Ed. 751;

Lovell v. City of Griffin, Ga., 303 U. S. 444; 82 L. Ed. 949;

People of State of N. Y., ex rel., Bryant vs. Zimmerman. 278 U. S. 63; 73 L. Ed. 184.

U. S. v. Pink, 315 U. S. 203; 86 L. Ed. 796;

Indiana, ex rel., Anderson v. Brand, 303 U. S. 95, 82 L. Ed. 444, 113 A. L. R. 1485.

Jurisdiction of the Court is further invoked because the Supreme Court of Florida, in its opinion and decision adverse to the Petitioner, held him guilty of charge No. 3 upon which the City Commission acquitted Petitioner and found him not guilty. This is clearly borne out by the Florida Supreme Court's opinion concerning the fault of the Petitioner, in the following language:

> "Fault is not to be found so much with the Chief because he assisted in securing the release on bond of a bus driver who had been incarcerated lawfully, an act which to the most fantastic mind does not come within the purview of his official duties, *but rather that he failed to perform his duties and became an appeaser to the extent that he knuckled under to the intimidating demands and requirements of those whose conduct evidenced the fact that they would supplant law and order with mob violence.*"

At Petitioner's first opportunity he raised, in his petition for rehearing, the question that this finding of the Supreme Court of Florida deprived him of his property rights of office without due process of law, contrary to the Fourteenth Amendment of the Federal Constitution (See ground No. 4,

Petition for rehearing), and the Supreme Court of Florida necessarily passed upon this claim of the Petitioner when said Court denied his petition for rehearing.

Again jurisdiction is invoked because the Supreme Court of Florida, in Petitioner's case* found him guilty of neglect of duty for failing to enforce a State law which the Supreme Court of Florida later held had not been violated.** The first opportunity Petitioner had to claim that these inconsistent holdings of the Florida Supreme Court denied him his property rights of office, contrary to the Fourteenth Amendment of the United States Constitution, is in this petition for certiorari.

We think the following cases support jurisdiction of this Court under these circumstances:

Harris v. Dennie, 7 L. Ed. 683, 8 Curtis 422;

Eureka Lake & Yuba Canal Co. v. Yuba County, 116 U. S. 410, 43 L. Ed. 521;

Potter v. Dowd, 146 Fed. (2d) 244.

C.

The Questions Presented

(1) Has a chief of police, protected from arbitrary removal by civil service provisions of a city charter, been deprived of his property rights of office without due process of law, contrary to the Fourteenth Amendment to the United States Constitution, when he is removed from office on the ground of neglect of duty because, in good faith and in the exercise of his best judgment, he adopted lawful and peaceful means, as he was allowed to do under a City ordinance, to

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**Nelson v. State, ex rel. Quigg,* (July 24, 1945) .....Fla....., 23 So. (2d) 136.

***State, ex rel. Frazier v. Coleman,* (Oct. 5, 1945) .....Fla. ..... 23 So. (2d) 477.

promptly dissolve a serious emergency and traffic hazard that paralyzed the public transportation system of two municipalities and threatened to suspend the municipal water supply, especially where he had no reasonable opportunity prior to his removal to cause the arrest and punishment of the offenders?

(2) Has a chief of police, protected from arbitrary removal by civil service provisions of a city charter, been deprived of his property rights of office without due process of law, contrary to the Fourteenth Amendment to the United States Constitution, when, solely by reason of political pressure brought to bear on the Commission by a newspaper hostile to the chief, the city commission after striking a charge against the chief of police, on their own motion reinstated the charge and removed the chief of police on the same?

(3) Has a chief of police, protected from arbitrary removal by civil service provisions of a city charter, been deprived of his property rights of office without due process of law, contrary to the Fourteenth Amendment to the United States Constitution, when one of the commissioners who cast the deciding vote against him, refused to disqualify himself as one of the judges trying the then chief, upon the chief's timely motion therefor, when said commissioner was prejudiced and biased against the chief and unable, by reason of such prejudice, to give the chief of police a fair and impartial trial?

(4) Has a chief of police, protected from arbitrary removal by civil service provisions of a city charter, been deprived of his property rights of office without due process of law, contrary to the Fourteenth Amendment to the United States Constitution, when the Supreme Court of Florida affirmed his removal on the ground that he had neglected his duty to enforce against union bus drivers a State law against strikes, which law they subsequently held had not been violated by the bus drivers?

(5) Has a chief of police, protected from arbitrary removal by civil service provisions of the city charter, been deprived of his property rights of office without due process of law, contrary to the Fourteenth Amendment to the United States Constitution, when the witnesses produced against him during his trial which resulted in his removal were not required, upon timely objection by the chief, to give their testimony under sanctity of an oath?

(6) Has a chief of police, protected from arbitrary removal by civil service provisions of the city charter, been deprived of his property rights of office without due process of law, contrary to the Fourteenth Amendment of the United States Constitution, when the Supreme Court of Florida, notwithstanding its holding that a Court could not substitute its judgment for that of a city commission trying a chief of police, nevertheless affirmed his removal from office and based the reason for its decision upon the subject-matter of a charge upon which the City commission found the chief not guilty?

(7) Has a chief of police, protected from arbitrary removal by civil service provisions of a city charter, been deprived of his property rights of office without due process of law, contrary to the Fourteenth Amendment of the United States Constitution, and denied the equal protection of the law, contrary to said amendment, when the Supreme Court of Florida affirmed the chief's removal, notwithstanding that he was removed by less than a two-thirds vote of the city commission trying the chief which the statute governing such removal required?

D.

Reasons Relied on for Allowance of the Writ

The reasons relied upon by Petitioner for allowance of the writ are:

1. The decision of the Supreme Court of Florida is in direct conflict with *Wilkes v. Dinsman*, 48 U. S. 88, 12 L.

Ed. 618, and with the decision of the Supreme Court of Florida in *Hammond v. Curry*, 153 Fla. 245, 14 So. (2d) 390, in both of which cases it is held that a public officer cannot be penalized where in good faith he accomplished a lawful result, even though in so doing he may have committed an error of judgment. This rule is especially applicable in this case where *Section* 301 of the Miami Traffic Code, Ordinance No. 2574 enacted by the Miami City Commission, gives the Chief of Police the discretionary privilege to act contrary to the provisions of said Traffic Code (for the non-enforcement of which Petitioner was removed by the City Commission) in the event of an "emergency, or to expedite traffic, or to safeguard pedestrians, or when necessary to protect property".* The failure to accord to the Petitioner the benefit of this law denied him the equal protection of the law and deprived him of his property rights of office and pension without due process of law, contrary to the Fourteenth Amendment to the United States Constitution. A correct decision in this case is of transcendent and vital importance to every civil service police officer in the country protected in his tenure from arbitrary removal.

2. On the same day, namely, July 24th, 1945, Petitioner's case (*Nelson v. State, ex rel. Quigg*, 23 So. (2d) 136) was decided. The Supreme Court of Florida also decided the case of *Pennekamp v. State*, 22 So. (2d) 875, wherein the conviction for contempt of the Miami Herald Publishing Company, which publishes the Miami Herald, for publishing

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*"301. DUTIES OF POLICE. That hereafter it shall be the duty of Police Officers of this City to enforce the provision of this ordinance, and they are hereby vested with all the power and authority necessary for the enforcement thereof, provided that, in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, or when necessary to protect property, officers of the Police or Fire Division may direct, as conditions may require, contrary to the provisions herein contained." (See Page 905, Vol. IV of transcript of testimony taken before City Commission, attached to quo warranto information of Petitioner as Exhibit "A").

an editorial attacking two Circuit Court Judges of Dade County, Florida, was upheld because, among other reasons, the Supreme Court of Florida said:

> "Freedom of the press cannot be exploited in a manner to destroy fair and impartial trial";

and also,

> "The theory of our system of fair trial is that the determination of every case should be induced solely by evidence and argument in open court and the law applicable thereto and not by any outside influence, whether of private talk or public print."

The Supreme Court of Florida arbitrarily and capriciously ignored these announced fundamental principles in Petitioner's case by sanctioning Petitioner's removal on charge No. 7 which, after being duly stricken by the Miami City Commission from the City Manager's specification of charges against the Petitioner, was later, during the course of Petitioner's trial, but after the City Manager had rested his case against the Petitioner, reinstated, by the motion and the vote of a Commissioner who admittedly reversed his position from striking said charge to reinstating it, because he was influenced and intimidated by the Miami Herald into so doing by reason of editorials, published during Petitioner's trial before the City Commission, condemning the Commissioner for his vote in striking the charge and plainly advising him to reinstate it. This same Commissioner whose vote was necessary both to reinstate the charge against the Petitioner and to remove the Petitioner from office on said charge, because his vote constituted the majority vote in each instance, did vote for the removal of the Petitioner on said charge. Thus the Petitioner was denied the equal protection of the law and was denied a fair and impartial trial, and thus he was deprived of his property rights of office and pension without due process of law and in violation of the Fourteenth Amendment to the United States Constitution.

3. The Supreme Court of Florida arbitrarily and capriciously ignored its rule announced in the case of *State Board of*

Funeral Directors v. Cooksey, 148 Fla. 271, 4 So. (2d) 253, where it held that a member of a Board of Funeral Directors and Embalmers should not sit in judgment upon an accused brought before the Board when the prejudice of a member of the Board against the accused is made to appear, but that the Board should act without the participation of such prejudiced member, even though the Statute, (Chapter 17950 Acts of Florida 1937) which created the Board did not provide for the disqualification of such prejudiced Board member.

During Petitioner's trial before the City Commission the Miami Herald on successive days published two editorials,* against the Petitioner and Commissioner Hosea, designed and intended to influence, prejudice and intimidate Commissioner Hosea into reinstating charge No. 7 against the Petitioner which Commissioner Hosea had previously voted, with two other Commissioners, during Petitioner's trial to strike from the City Manager's charges against Petitioner. Reached by such editorials and acting on their advice so to do, Commissioner Hosea, whose vote was necessary to constitute a majority vote of the City Commission, moved, voted for and secured the reinstatement of charge No. 7 against the Petitioner on a three to two vote of the City Commission. His willingness to sacrifice Petitioner's constitutional right to a fair and impartial trial was made all the more manifest when he declared, as he moved to reinstate the charge, that his vote striking it out represented his honest belief that it was the right thing to do, but that the wrong interpretation had been placed on his vote.** Petitioner then promptly moved the City Commission to disqualify Commissioner Hosea and objected to his further participation in Petitioner's trial. This motion was denied by the City Commission and Commissioner Hosea refused to rescue himself from Petitioner's trial.

Later during Petitioner's trial he objected again to Com-

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*Transcript of record before Supreme Court of Florida, Page 18.

**Exhibit "A", Vol. II, Page 375.

missioner Hosea's further participation as judge in his case and moved for his disqualification when, as a result of Commissioner Hosea's interrogation of the Petitioner concerning Commissioner Hosea's interference with the Police Department, this Commissioner engaged in a bitter controversy over this subject, and whether or not he was drunk in the City Manager's office. Notwithstanding that it became and was apparent that Commissioner Hosea was unyieldingly hostile and prejudiced against the Petitioner as a result of this controversy and said editorials, the City Commission refused to disqualify him to sit in judgment on Petitioner and Commissioner Hosea refused to recuse himself as a judge of the Pettitioner, but instead, chose to sit in judgment on the Petitioner and to cast the deciding vote against him for his removal from office. Petitioner was thus deprived of a fair and impartial trial guaranteed him by the Fourteenth Amendment to the United States Constitution, and his property rights of office and pension were taken from him without due process of law, contrary to said Amendment.

4. Notwithstanding that the City Manager who preferred the charges against the Petitioner denied that he suspended Petitioner because he did not prosecute the bus drivers under State laws, as well as under municipal ordinances, for their acts on the night of March 29, 1944* the City Manager's charge No. 1 and 4, upon which the City Commission removed the Petitioner, respectively charged the Chief of Police with neglect of duty in failing to enforce:

> ". . . . . the criminal statutes of the State of Florida at the time of . . . . . a strike of bus drivers in said City on the night of March 29, 1944" (Charge No. 1)

And, in failing to bring about:

> "the apprehension, arrest and punishment of any or

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*Page 305, Vol. II, Transcript of Testimony taken before City Commission, attached to quo warranto information as Exhibit "A".

all of numerous persons who violated . . . . the criminal statutes of the State of Florida at and during the time of a strike of bus drivers in said City on the night of March 29, 1944." (Charge No. 4).

The bill of particulars specifically alleges, *Chapter* 21968, Laws of Florida 1941 * as a State law which the Chief of Police failed to enforce. The City Commission found the Chief of Police guilty of failing to enforce this State law and removed him from office for such failure. The Supreme Court of Florida sanctioned this removal in its decision reversing the Circuit Court of Dade County, Florida, which had held the Petitioner's removal from office illegal. In its decision, the Supreme Court of Florida refers to the action of the bus drivers and their leader, Frazier, as an "unwarranted, unofficial and unlawful strike". ** Today the Chief of Police of Miami is removed from his office because he failed to enforce said State law prohibiting a strike of the bus drivers on the night of March 29, 1944.

In the case of *State, ex rel. Frazier v. Coleman,* (Fla. October 5, 1945) 23 So. (2d) 477, in which the same union bus leader so strongly condemned in the Quigg decision as the leader of the "strike" of bus drivers, was discharged from custody on habeas corpus by the Supreme Court because the Supreme Court held that said State Law was not violated, because the bus drivers were "demonstrating" not "striking" on the night of March 29, 1944. These inconsistent decisions of the Supreme Court of Florida demonstrate that said Court arbitrarily and capriciously affirmed the City Commission's removal of the Petitioner from his office, and, in so doing, denied him the equal protection of the law and deprived him of his property rights of office and pension without due process of law, contrary to the Fourteenth Amendment of the United States Constitution.

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*Page 23, Vol. I, Exhibit "A" of proceedings before City Commission.

**_Nelson v. State, ex rel. Quigg,_ (Fla. July 24, 1945) 23 So. (2d) 136, 137

5. On timely objection made by the Petitioner that testimony produced against him by the City Manager should be under the sanctity of an oath, the City Commission refused to require any of the City Manager's witnesses against the Petitioner to be sworn by any official of the State of Florida duly authorized to administer an oath, but permitted the Mayor, acting as Chairman of the City Commission at Petitioner's trial, to administer an oath to the City Manager's witnesses, notwithstanding that said Mayor was not authorized, either by any State Statute or by the common law, to administer such an oath. The Supreme Court of Florida has held * that "an attempted oath administered by one who is himself not qualified to administer it is abortive and in effect no oath". It is essential to due process that, in an adversary proceeding, witnesses should be required to give their testimony against an accused under the sanctity of an oath. The failure of the Supreme Court of Florida to require this essential prerequisite of due process, though it was brought to the attention of the Supreme Court of Florida specifically in Petitioner's pleadings, his brief and petition for rehearing, operated to deprive the Petitioner of his property rights of office and pension without due process of law, and denied him the equal protection of the laws.

6. The City Commission of Miami acquitted the Petitioner of Charge No. 3, reading as follows:

> "You are guilty of misfeasance in the office of Chief of Police in the Division of Police of the City of Miami, Florida, by reason of the fact that, in violation of your oath of office, you devoted your time and your energies at and during the time of a strike of bus drivers in said City on the night of March 29, 1944, to meeting the demands of the leaders of the drivers, who were violating in your presence and under your observation the ordinances of said City and the criminal statutes of the State of Florida, and in aiding and abetting said leaders to effect the release from the City jail of a prisoner who had been lawfully convicted in the Municipal Court of

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**Crockett v. Cassels*, 95 Fla. 851, 116 So. 865

said City and had been lawfully sentenced to imprisonment in said jail."

But the Supreme Court of Florida convicted him of his charge because the ratio decidendi of its decision is as follows:

> "Fault is not to be found so much with the Chief because he assisted in securing the release on bond of a bus driver who had been incarcerated lawfully, an act which to the most fantastic mind does not come within the purview of his official duties, but rather that he failed to perform his duties and became an appeaser to the extent that he knuckled under to the intimidating demands and requirements of those whose conduct evidenced the fact that they would supplant law and order with mob violence."*

In Petitioner's case also the Court held:

> "The fact that it is not the province of an appellate court to try cases de novo on a cold typed transcript is too elementary to require emphasis."

The Supreme Court denied to the Petitioner this elementary rule last quoted, and, in effect, did try him de novo and found him guilty of charge No. 3, contrary to the findings of the City Commission. In so doing the Supreme Court of Florida denied to the Petitioner the equal protection of the law and deprived him of his property rights of office and pension without due process of law, contrary to the Fourteenth Amendment to the United States Constitution.

7. The Supreme Court of Florida, in *State v. Bloodworth*** held that *Section* 2948, C. G. L. of Florida (*Section* 165.18 Florida Statutes Annotated), was a part of the City Charter of the City of Miami and required a two-thirds vote of the Miami City Commission for the removal of a city official by

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**Nelson v. State, ex rel. Quigg*, 23 So. (2d) 136, 138.

***State v. Bloodworth*, 134, Fla. 369, 184 So. 1

said Commission. Said Section 165.18 reads as follows:

> "Powers of Council concerning election returns, expulsion, etc.—The city or town council may judge of the election returns and qualifications of its own members, make such by-laws and regulations for their own guidance and government as they may deem expedient and enforce the same by fine or penalty, and compel attendance of its members; and two-thirds of the council may expel a member of the same or other officer of the city or town for disorderly behavior or malconduct in office."

A two-thirds vote of the City Commission of Miami would mean a four to one vote of the City Commission. Petitioner was removed by a three to two vote, and he timely objected before the City Commission to his removal by such vote. In his pleadings, in his brief, and in his petition for rehearing, Petitioner called this to the attention of the Supreme Court of Florida. The Supreme Court of Florida did not give the Petitioner the benefit of this law and, in so doing, denied him the equal protection of the laws and deprived him of his property rights of office and pension without due process of law, contrary to the Fourteenth Amendment to the United States Constitution.

Prayer for Writ

WHEREFORE your Petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Clerk of the Supreme Court of Florida, commanding that Court to certify and send to this Court for review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case, entitled "Charles O. Nelson, Appellant vs. State of Florida, ex rel., H. Leslie Quigg, Appellee", and that the judgment of the Supreme Court of Florida may be reviewed by this Honorable Court and that your Petitioner may have such other and further relief in

the premises as to this Honorable Court may seem meet and just; and your Petitioner will ever pray.

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"Copy of Supreme Court Opinion"

In the Supreme Court of Florida

JUNE TERM, A. D. 1945

EN BANC

CHARLES O. NELSON, *Appellant,*

vs.

STATE OF FLORIDA, ex rel,

H. LESLIE QUIGG, *Appellee.*

Opinion filed July 24, 1945.

An Appeal from the Circuit Court for Dade County, Ross Williams, Judge, J. W. Watson, Jr., Franklin Parson and John M. Murrell, for Appellant. G. A. Worley and Jack Kehoe and E. F. P. Brigham, for Appellee.

HOBSON, CIRCUIT JUDGE

This case had its inception strictly as a judicial proceeding in the Circuit Court of the 11th Judicial Circuit in an action initiated by the filing of an information in quo warranto in the name of the State of Florida on relation of H. Leslie Quigg Relator, and against Charles O. Nelson, Respondent. Its true genesis, however, was in a hearing before the City Commission of the City of Miami. This hearing was inaugurated by the City Manager and had as its purpose the determination, as a matter of fact, of whether the charges filed against Quigg, the then Chief of Police of Miami, were true and required Quigg's removal from office. The City Charter of Miami authorizes such action and prescribes the procedure to be followed. We find that there was a legally sufficient compliance with statutory requirements in every particular in connection with the hearing before the City Commission. As a result of this full and complete hearing, the City Commission removed Mr. Quigg from the office of Chief of Police.

Thereafter Charles O. Nelson was installed as Quigg's successor. The Circuit Judge in effect reversed the action of the City Commission by the entry of a judgment of ouster against the Respondent Nelson in the quo warranto proceedings.

Many questions have been posed for our consideration and to aid us in a proper determination of this controversy. We deem it sufficient to say that the answer to one of these questions is determinative of the case. As to all other assignments of error and questions presented, we find, upon an examination of the entire record, no harmful or prejudical error.

The question which is determinative of this case on appeal (and it was before the Circuit Court in a proceeding in the nature of an appeal) may be stated in more than one form. We prefer to pose the query in the following verbiage—does a consideration of the record in its entirety disclose the ruling of the City Commission to be sustained by substantial evidence? We have held, and it seems to be an almost universal rule, that the findings of fact made by an administrative board, bureau, or commission, in compliance with law, will not be disturbed on appeal if such findings are sustained by substantial evidence. (Hammond, L. v. City of Miami, Fla. 153 Fla. 245, 14 So. 2d 390; Jenkins v. Curry, City Manager et al., 18 So. 2d 521; Callahan v. A. B. Curry, 153 Fla. 739, 15 So. 2d 688; Marshall vs. Pletz, 317 US 383, 63 S, Ct. 284, 67 L. ed 348; Virginia Electric & P. Co. vs. National Labor Re. Bd., 319 US 533, 63 S. Ct. 1214, 87 L ed 1568). The underlying and salient reasons for this safe and sane rule need not be repeated here. The fact that it is not the province of an appellate court to try cases de novo on a cold typed transcript is too elementary to require emphasis. This rule finds its counterpart in, if indeed it is not the twin brother of, the rule which requires an appellate court to give great weight to the findings of fact made by a jury or a chancellor and to sustain such findings unless there is no substantial evidence to support them. (See Broxson v. State, 99 Fla. 1187, 128 So. 628; Smith vs. Midcoast Inv. Co., 127 Fla. 455, 173 So. 348; Marcus vs. Hull, 142 Fla. 406, 195 So. 170).

The rule invoked herein is salutary and founded in good common sense and irrefutable logic. It should be adhered to religiously. The advent of the talking moving picture probably has given us a preview of a sound reason for its ultimate abolition. However, until this possible avenue of escape has been made adaptable to, and a requirement in, judicial proceedings, the rule should remain inviolate.

Upon a careful consideration of the complete record, we find that the ruling of the City Commission is sustained by substantial evidence. It was the failure of the learned Circuit Judge to apply the rule which we invoke herein which caused him to fall into error. It is not difficult, however, to understand how a Circuit Judge, whose daily work is predominantly fact finding in character, might easily overlook this rule.

It is unnecessary to a proper determination of this controversy to detail the evidence which was before the City Commission. It is appropriate, nevertheless, at this moment, when the members of our armed forces dice with death on the far-flung battle fronts and our form of government, indeed our very existence, is being challenged by a large portion of the peoples of the earth, to refer as briefly as possible to the unbelievable situation which developed and was attendant upon the Miami bus drivers' unwarranted, unofficial and unlawful strike. This incident, coupled with its ramifications as disclosed by the evidence, presented ample justification for the ruling made by the City Commission. The congregation of busses about the Court House in downtown Miami, which was brought about by the unauthorized orders and directions of certain leaders of the bus drivers' union, created a figurative coronary thrombosis at the very heart of the metropolitan area. All parties to this controversy agree that a grave situation existed. Counsel for Quigg contend that he exercised his discretion and best judgment and should not have been removed even if his course had not been productive of satisfactory results. This was Quigg's position before the City Commission.

But what course of conduct did Chief Quigg pursue? At the time of this strike he was the principal law enforcement officer of the City of Miami. Almost without exception every child of school age in America knows what the words "Law enforcement officer" mean—one invested with the authority and charged with the duty to enforce the law. It is that simple. No one denied the fact that multiple city ordinances were violated right and left by the bus drivers at the voluntary direction of the union leaders, particularly one Frazier. That such violations were known to the chief is not challenged and could not be consistently denied. No one with the normal human senses could have unwittingly overlooked them. But if he did so overlook them he can find no comfort in that fact. Thereby his incompetance would have been clearly established.

During this strike, according to Quigg's own testimony, he could have called to his assistance three hundred sixty-eight policemen within fifteen to forty-five minutes. In addition, a change of police shifts took place at which time the outgoing police as well as the incoming ones could have been held and their combined number would have been sufficient to have eliminated at least the serious traffic hazard with its attendant grave potentialities.

In the face of this situation, the chief took only one step which even he might fairly consider affirmative conduct in line of duty. To one of his subordinates he said, "Keep cool and calm and keep the line of traffic open, if possible." To the Court this statement speaks for itself. It was more in the nature of an aside remark than a forceful command or direction. Moreover, the record fails to show either any serious effort to perform his duties or any proximate accomplishment thereof. Quigg was either incompetent, as aforementioned, or deliberate in the avoidance of his immediate duties. It appears that all the rest of his time and energies were devoted, not to law enforcement or official duties, but to a course of conduct prescribed, required and demanded by the leaders of the bus drivers' union. His conduct can be best described by the word which has become

known and accepted universally as a synonym for the surname Chamberlain.

Fault is not to be found so much with the Chief because he assisted in securing the release on bond of a bus driver who had been incarcerated lawfully, an act which to the most fantastic mind does not come within the purview of his official duties, but rather that he failed to perform his duties and became an appeaser to the extent that he knuckled under to the intimidating demands and requirements of those whose conduct evidenced the fact that they would supplant law and order with mob violence. Law enforcement officers cannot be so intimidated, cowed, overawed and swayed from their paths of duty if we are to preserve—that which throughout one hundred sixty-eight years of our national existence we, a body of free people, have fought, bled and died to preserve —the quasi Utopian dream of our forefathers which we now so proudly and popularly term "The American way of life."

The judgment of ouster should be, and it is hereby reversed.

CHAPMAN, C. J., TERRELL, BROWN, BUFORD, SEBRING, J. J. and SANDLER, CIRCUIT JUDGE CONCUR.

SANDLER, CIRCUIT JUDGE, CONCURRING:

I concur in the opinion prepared by Judge Hobson. While this cause originated in the Circuit Court of the Eleventh Judicial Circuit, nevertheless, it brought for review and not for retrial the proceedings before the City Commission. It was not the province of the Circuit Court to retry the case on the record and substitute its judgment for the judgment of the City Commission, but it was the duty of the Circuit Court to review the proceedings to determine if the jurisdictional requirements were complied with and if the judgment of the City Commission found support in the record. That was the question there and is likewise the question here.

There were nine charges filed against the Chief of Police, two of which were quashed, he was acquitted on three and found guilty on four. The charges, on which the Chief of Police was convicted, accused him of neglect of duty by reason of his neglect and failure to enforce the Ordinances of the City of Miami and Criminal Statutes of the State of Florida; failure to bring about the apprehension, arrest and punishment of the persons who violated the said Ordinances and Statutes at and during the time of a strike by the bus drivers in the City on the night of March 29, 1944, and incompetence, as Chief of Police, by reason of the fact, that he had permitted the police department to fall into a state of disorganization, disunity, discord and inefficiency.

The defense in this case may be best summed up by the testimony of the Chief of Police himself, when he testified,

> "I didn't see anybody violate the law, and I didn't see anybody—I saw laws violated, cars parked after they were violated, so I didn't do anything." * * * "The action I took I thought was the best, because it was discretionary. I had the discretionary powers to use my best judgment in case of an emergency and I thought the easiest was the best, which proved to be."

With eighty-three buses congregated around the City Hall about ten o'clock at night, instead of complying with his oath of office to enforce the Ordinances and the Statutes, the Chief took the easiest way out and permitted the bus drivers to take over, one of whom in response to a question inquiring as to the nature of the trouble replied,

> "The main issue is: Who is the biggest—the city Court Judge or 600 bus drivers."

There are times when discretion may be the better part of valor, but never at the expense of law and order.

When a government of men is substituted for a government of law liberty disappears and tyranny prevails. History now

in the making has so clearly demonstrated this as to make comment unnecessary.

A careful study of the voluminous record in this case convinces me that not only is there substantial evidence in the record to support the findings and judgment of the City Commission, but that its judgment is entirely consistent therewith.

In the Supreme Court of Florida

JUNE TERM, A. D. 1945
EN BANC

CHARLES O. NELSON, *Appellant*

vs.

STATE OF FLORIDA, ex rel.,
H. LESLIE QUIGG, *Appellee.*

APPELLEE'S PETITION FOR REHEARING

The Appellee petitions for hearing upon the following grounds:

I.

The Court overlooked that Appellee was, contrary to the Fourteenth Amendment of the United States Constitution, deprived of his property rights of office and pension by a bare majority of the City Commission without due process, in that the Court held the Commission's ruling sustained by *substantial evidence.* To be dignified as *evidence* in a Court of Law due process requires that testimony be given under the sanctity of an oath. The Commission refused, after timely objection made, to require the City's witnesses to be sworn by a notary public or other qualified officer, but permitted the Mayor, who has no authority whatever in this proceeding, either at common law or by statute, to swear all City witnesses. On Page 138, et seq. of our brief we demonstrated both the necessity for an oath and the Mayor's lack of power to administer one.

The decision mentions our war effort and our military forces in foreign lands fighting for the cause of democracy (with which no one is more conversant than Chief Quigg, as he constantly watches for news of his son, almost daily riding on the wings of death over Japan in his B-29). Democracy at home, for our boys to come back to, however, as we know the Court agrees, recognizes the necessity that fundamentals of liberty be preserved here; and one of them, we suggest, is that no American should be condemned and his property rights taken away except by due process of law, of which, sworn testimony, we thought, an essential ingredient.

Obviously the learned Circuit Judge who wrote the opinion for the Court, and the eminent Jurists who concurred, overlooked this point, for it cannot, even for a moment, be thought that they, having so keenly in mind, as reflected by their decision, the fundamental democratic principles for which men die, would, except by inadvertance, ignore those which these men hoped, by their dying, they could let live.

II.

The Court overlooked that a bare majority of the City Commission who dismissed Chief Quigg from office denied him a fair and impartial trial to which he was entitled under the Fourteenth Amendment of the United States Constitution and Section 11, Declaration of Rights, Florida Constitution. In the Herald contempt case, decided the same day as the Quigg case, the Court quoted with approval the following language:

> "There is another Constitutional guaranty equally as binding as freedom of the press. We have reference to fair and impartial trial guaranteed by Article 6, Federal Constitution, and Section 11, Declaration of Rights, Florida Constitution. Freedom of the press cannot be exploited in a manner to destroy fair and impartial trial .... when press reports of a trial are turned into assaults

on the character and integrity of the presiding judge .... they degenerate into trial by newspaper."

One of the Commissioners whose vote was necessary to constitute a bare majority against Chief Quigg stands convicted by the record and his own admission of switching his vote several days later from one of striking charge 7 to one of reinstating it against Chief Quigg, because he was intimidated into so doing by the same newspaper which now stands convicted by the Supreme Court of trying unsuccessfully to intimidate two Circuit Court Judges. We demonstrated this conclusively on page 54, et seq., of our brief, where the cartoons, the editorials, the judicial admissions and the admitting statements of the Commissioner are referred to and quoted from.

To us it is inconceivable that the Court would, except by inadvertance, on the same day it condemned the unsuccessful attempt of a newspaper to influence by intimidation a courageous judge, find no error when such attempt succeeded with a weaker one, resulting in denying to a litigant perhaps his most sacred and primary privilege, namely, to have a fair and impartial trial. It stands judicially admitted, and the record is clear, that charge No. 7, once dismissed with the vote of a commissioner, was restored by the pen of a cartoonist and an editorial writer. The present war has proven the pen not to be mightier than the sword, but this case proves it to be stronger than a faint hearted judge. Our "democracy", our "quasi-Utopian dream", our "American Way of Life". extolled with patriotic fervor in the opinion, all become mirages to mock our thirst for impartial justice, when whether it lives or perishes, depends upon the variable political caprices of a newspaper.

The opinion strongly condemns Chief Quigg, because, apparently, the Court thought his actions motivated by fear, though the record repeatedly denies this—Chief Quigg even testifying that his dead body would have been lying on the Courthouse steps had the strikers sought to secure anything

unlawful. On the other hand, however, the opinion is silent about the admitted intimidation of a commissioner who sat in judgment on the charges against the Chief.

Surely it is not consistent with a fair trial, as we understand it, that the impartial Goddess of Justice, pictured in men's minds as having both eyes tightly bandaged against all outside influences, so that her hand might hold in true balance the scales of justice, should lower the bandage from one eye to view with condemnation the asserted intimidation of an accused, and keep the other eye tightly bound and blind to the successful intimidation of the judge trying the accused.

The Court never intended any such result and we earnestly ask that you make this clear upon rehearing.

III.

In characterizing Chief Quigg's conduct by "a synonym for the surname Chamberlain" and stigmatizing him as "intimidated, cowed, overawed, and swayed from his path of duty" the Court has unintentionally, we believe, laid down the dangerous rule that a law enforcement officer cannot in a situation of grave emergency preserve the peace, save lives, prevent damage to persans and property, quell disorder, relieve the public from the inconvenience of disrupted public utilities by any method except by the exercise of force. The emphasis of the opinion upon the larger number of available men to aid Chief Quigg, and the language of the learned Circuit Court Judge who wrote the opinion that "their combined number would have been sufficient to have eliminated at least the serious traffic hazard with its attendant grave potentialities" seems most indicative of the establishment of such rule. Since Chief Quigg in one hour and twenty minutes settled the strike and removed all "its grave potentialities", something which the application of force could not, under the circum-

that Chief Quigg's fault in the eyes of the Court necessarily lay in his method rather than in his result.

In labeling Chief Quigg's method of securing the peaceful termination of the strike as "Chamberlain appeasement", the Circuit Judge who wrote the opinion unfortunately failed to distinguish between what the record shows to have been the actions of Chief Quigg, and what history records to be the actions of the British Statesman.

First: Chamberlain, under the circumstances presented to him, incorrectly judged Hitler and his intentions with the result that his appeasement plunged the world into an ocean of blood, with uncounted billions of property damage and destruction, at a time when valor might have been the better part of discretion. Chief Quigg, however, correctly judged Frazier and his intentions, with the result that his appeasement shed not one drop of blood, hurt not one innoecnt bystander, destroyed not one dollar's worth of property, interrupted only one public utility for about one hour and twenty minutes, stopped the imminent threat of a general paralysis of public utilities necessary to health and safety, and restored permanent peace and order to the community. We suggest that those whose lives, property, and convenience were thus removed from jeopardy by the prompt action of Chief Quigg would all agree that this was a time when he should have used discretion, rather than a rash and costly valor, especially since the law allows ample time for valor to be displayed by regular prosecution through the Courts of those guilty of criminal offense.

If Chamberlain could have by peaceful means accomplished internationally what Quigg did locally as Chief of Police, it is doubtful whether the British Empire would have proven ungrateful enough to have removed him in disgrace from his office even though such action was strongly advocated by a London newspaper.

Second: Hitler wanted what it was unlawful and wrong for him to have, and what Chamberlain knew it was unlawful

and wrong for him to have, namely, the annexation of Czechoslovakia. By assisting him to obtain it, he became an accessory to an unlawful and wrongful purpose and object. Frazier wanted something which it was lawful and right for him to have, namely the release on bail bond of a man who was entitled to such bond under both our State and Federal Constitutions. It is, of course, correct that it is not the official duty, as such, of a chief of police to assist an accused to post bond which is a judicial function. However, it is the duty of a police officer to protect persons and property from threatened wrong and to prevent disorder. In the performance of these duties he is given a reasonable discretion under the general law and by virtue of city ordinance. *Section* 301 of the Traffic Code of Miami provides:

> "provided that, in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, or when necessary to protect property, officers of the Police or Fire Divisions may direct, as conditions may require, contrary to the provisions herein contained."

(See brief, p. 19); also see pages 27 to 37, Appellee's brief. If a police officer reasonably believed (and the testimony is undisputed that he did) that in order to protect persons and property from threatened wrong, and to prevent further and greater disorder it became necessary for him to do a lawful act which "to the most fantastic mind does not come within the purview of his official duties" can it be correctly said he swayed from his path of duty by so doing, when thereby he protected and prevented that which it was his official duty to protect and prevent?

Simple, indeed, to define "law enforcement officer", as it is to define "judge". Difficult, indeed, to enforce the law correctly on all occasions as it is to apply correctly legal principles to all circumstances. That, we believe to be the reason the law allows a peace officer reasonable discretion in the performance of his duties, holding him accountable for only those errors of judgment motivated by malice or bad faith.

In the *Hammond* case, 153 Fla. 245, 14 So (2d) 390, Your Honors announced this to be the law. In this case you appear to have deprived him of this discretion, because the opinion apparently prescribed surgery to the exclusion of preventative medicine as the sole remedy for "coronary thrombosis at the very heart of the metropolitan area."

IV.

No court is entirely free from error, but, we believe, no Court will more freely admit it in the interest of justice than the Supreme Court of Florida. It is the former quality which makes judges human; the latter, which shows them conscious of the divine. No principle is more difficult of application by finite minds than justice between man and man, and no characteristic is more Godlike than the zeal to do so.

In this spirit we suggest to Your Honors that you inadvertently convicted and condemned the Appellee upon charges *two* and *three* on which he was found not guilty by the City Commission, that tribunal whose judgment Your Honors held Circuit Court Judge Ross Williams in error for not upholding. By this action, we suggest, you deprived Chief Quigg of his property rights of office without due process of law contrary to the Fourteenth Amendment of the Federal Constitution, and the similar provision of our own, in that you upheld his dismissal not upon charges upon which he was convicted, but upon those on which he was acquitted.

It will horrify Your Honors, as it did Chief Quigg and his counsel, when you realize that you tried Chief Quigg "de novo on a cold typed transcript", and made findings of fact against him on said charges diametrically opposite to those of the City Commission, also without benefit "of the talking motion picture", a procedure for which you held Honorable Ross Williams in error, when he disagreed with the findings of the City Commission on the charges they did *not* dismiss. It never occurred to Chief Quigg's counsel to argue the correct-

ness of the Commission's findings of not guilty on those two charges upon which the decision is now based. It is, therefore, humiliating to counsel to find now that our failure to do so contributed to our friend and client not only being deprived of his office, but being branded a coward as well—something of which even a majority of the Miami City Commission acquitted him, and which until now had never been even remotely associated with his name by any responsible source.

The opinion says, "the ruling of the City Commission is sustained by substantial evidence." No distinction being made in the opinion between the evidence upon which the City Commission convicted the Appellee on charges *one* and *four*, and that which warranted them in acquitting him of charges *two* and *three*, one would assume it was the intention of the writer of the opinion to hold both the Commission's ruling of conviction as well as those of acquittal to have been sustained by *substantial evidence*. However, it is at once apparent, if such be the case, that the opinion is inconsistent in holding the Commission's findings of not guilty on charges *two* and *three* sustained by substantial evidence, and then approving the Commission's removal of Petitioner upon those same charges, as if he had been found guilty of them by the Commission. Since the learned Circuit Judge who wrote the opinion would not have been knowingly guilty of such inconsistency, it is much more probable, we suggest, that its occurence is due to the fact that he inadvertently overlooked the contents of charges *two* and *three* and their dismissal by the City Commission.

The opinion says that the bus strike with its ramifications amply justified the removal of Chief Quigg. (Opinion, p. 3). Chief Quigg's fault in connection therewith is unmistakably defined in clear, concise, and cutting language. The opinion says:

> "Fault is not to be found so much with the Chief because he assisted in securing the release on bond of a

bus driver who had been incarcerated lawfully, an act which to the most fantastic mind does not come within the purview of his official duties, but rather that he failed to perform his duties and became an appeaser to the extent that he knuckled under to the intimidating demands and requirements of those whose conduct evidenced the fact that they would supplant law and order with mob violence. Law enforcement officers cannot be so intimidated, cowed, overawed and swayed from their paths of duty . . . ."

This finding by the Court of fault to exist in Chief Quigg's method of handling the strike and the strikers necessarily results from a *de novo* trial of Chief Quigg by the Supreme Court, because the City Commission held him not to be guilty of such fault, when the Commission acquitted him on charge *three* reading as follows:

"You are guilty of misfeasance in the office of Chief of Police in the Division of Police of the City of Miami, Florida, by reason of the fact that, in violation of your oath of office, you devoted your time and your energies at and during the time of a strike of bus drivers in said City on the night of March 29, 1944, to meeting the demands of the leaders of the drivers, who were violating in your presence and under your observation the ordinances of said City and the criminal statutes of the State of Florida, and in aiding and abetting said leaders to effect the release from the City jail of a prisoner who had been lawfully convicted in the Municipal Court of said City and had been lawfully sentenced to imprisonment in said jail."

Furthermore, that part of the opinion mentioned above that Chief Quigg failed to perform his duties, likewise constitutes a trial *de novo* by the Supreme Court, because the chief was necessarily acquitted of this alleged failure to perform his duties when he was acquitted of charge number *two*, which reads as follows:

"You are guilty of neglect of duty by reason of your neglect and failure, as Chief of Police in the Division of

Police of the City of Miami, Florida, to give orders or instructions to the officers and other personnel of said Division of Police to enforce the ordinances of said City and the criminal statutes of the State of Florida, during or subsequent to the violations thereof committed at and during the time of a strike of bus drivers in said City on the night of March 29, 1944."

V.

The Court overlooked the point made on page 144, et seq., of our brief that by acquitting Chief Quigg of charge number *two* heretofore quoted in full in ground IV of this petition that by necessary implication the City Commission also acquitted him of charges *one* and *four*, the only charges relating to the bus strike upon which Chief Quigg was convicted. Charges *one* and *four*, respectively, read as follows:

"1. You are guilty of neglect of duty by reason of your neglect and failure, as Chief of Police in the Division of Police of the City of Miami, Florida, to enforce the ordinances of said City and the criminal statutes of the State of Florida at the time of violations thereof committed in your presence and under your observation at and during the time of a strike of bus drivers in said City on the night of March 29, 1944.

* * * *

4. You are guilty of neglect of duty by reason of your neglect and failure, as Chief of Police in the Division of Police of the City of Miami, Florida, to cause or to bring about the apprehension, arrest and punishment of any or all of numerous persons who violated the ordinances of said City and the criminal statutes of the State of Florida at and during the time of a strike of bus drivers in said City on the night of March 29, 1944."

The gist of charge *two* is that Chief Quigg neglected his duty, because he failed to give orders to the police personnel under his command to enforce the ordinances of Miami and criminal statutes of Florida, either *during* or *subsequent* to the time the bus strikers violated the same on the night of the

bus strike. The gist of charge *one* is that the Chief neglected his duty because he failed to enforce the same ordinances and criminal statutes, when they were violated by the bus strikers in his presence during the time of the bus strike. The gist of charge *four* is that Chief Quigg neglected his duty because he failed to cause the apprehension and punishment subsequent to the time of the bus strike, of the bus drivers who had violated these same ordinances and criminal statutes. It will thus be observed that charge *two* is a combination of both charges *one* and *four* and that every element of the latter charge is embraced in the former one. The law is clear that a judgment based upon such inconsistent findings of fact is void and not permitted to stand. We collected the cases allowing this to be the universal rule on Pages 146 and 147 of our brief. This point alone from a legal standpoint is determinative of the bus strike charges, and, if the Court sees fit to grant us a rehearing, we will demonstrate conclusively that the action of the Commission in finding the Appellee not guilty of charge *two*, but nevertheless removing him on charges *one* and *four*, is illegal and void, and deprives the Appellee of his property rights of office without due process of law, contrary to the Fourteenth Amendment of the United States Constitution.

VI.

Since the Court's opinion said the bus strike incident alone "presented ample justification" for the ruling made by the City Commission, we believe that Your Honors may have deemed it unnecessary to consider charge number *seven* dealing with the alleged friction between Chief Quigg and one of his subordinates, the non-establishment of schools in the Police Department, the influence of the Miami Police Benevolent Association in police matters, and the failure to use a teletype machine for a while in the Captain's office. If you did not consider charge number *seven*, and we are unable to determine this definitely from the opinion, then, of course, the sole question posed by the Court as determinative of the case, viz: "does a consideration of the record in its entirety disclose the

ruling of the City Commission to be sustained by substantial evidence?" would be irrelevant. If the Court considered charge *seven* and the question raised by the Court applicable to this charge, then we suggest the Court overlooked the fact which we demonstrated on pp. 59, et seq., of our brief that this charge was non-existent, when the City Commission made its ruling against Chief Quigg, because it had been stricken from the charges by the Commission on Appellee's motion and not legally revived. If so, the degree of evidence to support a stricken charge would be immaterial, for no quantum of proof could breathe life into a dead charge.

We showed that Section 26 of the Miami Charter vests exclusive and sole power in the City Manager to prefer a charge against the Chief of Police. During the progress of the City's case against Chief Quigg the Commission struck out charge *seven*, upon Appellee's motion, from the specification of charges preferred by the City Manager against the Chief of Police. After the City had rested its case, Commissioner Hosea, who formed the majority of the Commission who struck out charge *seven*, attempted himself to re-prefer it against the Chief, because of the attacks made upon him by the *Miami Herald* (see P. 56 of our brief). Commissioner Hosea moved to reinstate charge *seven*, which motion, of course, was concurred in by the two Commissioners who originally voted against the elimination of this charge. Since the City Manager alone could prefer a charge against the Chief of Police under the Miami City Charter, we contend that Hosea's attempt to do so, when he sought to reinstate this charge, was void. Either the Court therefore, as we believe did not consider charge *seven*, confining its opinion to the bus strike, or this point escaped consideration.

VII.

We suggest, with great deference to the views of the Court, that the Court overlooked the fact that Commissioner Hosea, whose vote was necessary to form the bare majority of the Commission who voted to remove Chief Quigg, was totally

disqualified to participate in the judgment against Chief Quigg, because of his proven and admitted domination by influence, de hors the record, hostile to Chief Quigg, and because of his bias and prejudice against Chief Quigg readily apparent during the course of the trial. Since the Court's opinion, as we understand it, found that Judge Ross Williams fell into error because he failed to recognize the consanguinity between the rules requiring that great weight be equally given by an appellate court to the findings of a chancellor and that of a city commission, we suggest that the Court overlooked that Judge Williams' failure to give great weight to the findings of a bare majority of the City Commission was not due to his lack of appreciation of the relationship between the rules, but rather, that he followed the exception to these rules, namely, that they are never applicable, when the findings of a Judge or a Commission are motivated by influence outside the record and are the results of prejudice and bias against an accused. Without the vote of Commissioner Hosea there could have been no finding of the City Commission against Chief Quigg because two of the five members of the Commission, namely, Commissioners R. C. Gardner and C. H. Reeder, voted for Chief Quigg on all charges. The fact that Commissioner Hosea failed to give a fair trial to Chief Quigg and an impartial consideration of the evidence tainted and fouled the findings against Chief Quigg of the Commission majority, regardless of what motives may have governed the other two members of the Commission who voted with Commissioner Hosea against Chief Quigg.

Viewed in this light, we respectfully suggest that Judge Williams did not fall into error, but rather avoided the pitfall of giving great weight in a Court of law to a finding infected with the vice of both politics and venom—two poisons which eternal vigilance itself finds difficult to keep from the Fountain of Justice.

Your Honors held in *State Board of Funeral Directors and Embalmers v. Cooksey*, 4 So (2d) 253, as late as 1941 that a member of an administrative board (which you have held

the City Commissioner to be in removal cases) should not participate in the Board's proceedings against an accused where such member is prejudiced against the accused, or interested in the outcome—and this too despite the fact that there was no provision in the law creating the Board for disqualification of such member. On Pages 62, et seq., we discussed at length Mr. Hosea's disqualification and the presentation of timely motion with accompanying affidavits that he disqualify himself, which he refused to do. We renewed our motion again, when he precipitated a heated controversy with Chief Quigg by questioning Chief Quigg's veracity during his trial, which brought out a disclosure of Commissioner Hosea's recent drunkness in the City Manager's office. This resulted in Commissioner Hosea being bitter, hostile, prejudiced, and biased against Chief Quigg, and made his vote against Chief Quigg the combined result of his fear of the *Miami Herald,* and his hatred of Chief Quigg. We urge the Court in the interest of justice and the known desire of Your Honors to accomplish it, that you read again pages 62-81 of our brief on this vital and far reaching point and allow us a rehearing.

VIII.

The opinion states "the record fails to show either any serious effort to perform his duties or any proximate accomplishment thereof." We suggest that in making this finding the Court overlooked in the volunminous record certain evidence which, when considered, renders, we believe, this conclusion at variance with the record. The eighty-three Miami Transit buses which served the City of Miami area, and the seventeen or eighteen Miami Beach Railway Company buses which served the City of Miami Beach area were all parked around the Courthouse, and their drivers had mingled with the crowd of five hundred or more people present, when Chief of Police Quigg, who had been home and in bed arrived on the scene shortly before eleven P. M. Some of the buses were legally parked against the curbing around the Courthouse. The record is undisputed that not one striking bus

driver violated any city ordinance or criminal statute of Florida by illegally parking a bus or driving it illegally in the presence of the Chief. (See Tr., pages 750-751). Chief Quigg, it is true, could have put illegal parking tickets on the buses; he could have attempted, with doubtful results, in view of the hostile spirit that prevailed then, to have ferreted out from the crowd of over one hundred bus drivers, those who were guilty of violating the law because of illegal parking from those who were not, and placed them in jail, but this would have required the City Clerk and his deputies to have been found, the City Clerk's office to be opened, a great number of affidavits to have been prepared, and a great number of warrants to be issued and served while the one hundred and fifty bus passengers, trying to get to their homes in Miami and Miami Beach, would have remained standing outside the Courthouse where they had been discharged by the bus drivers, or walked home. This would have precipitated, the record shows, violence of a tragic kind. The police officers, no doubt, could, with the assistance of the two city automobile wreckers and others that they might have been able to commandeer, have removed the buses to side streets, precipitating, no doubt, violence, and continuing the paralysis of the municipal transportation system of two cities, and likewise causing, as the Chief of Police had been reliably informed by the Municipal Judge and Director of Public Safety, sympathetic strikes of Union employees without whose labor the municipal water system would have failed. The latter strikes, the Chief had been informed, would have occurred at midnight, which was, as he testified, an important consideration in getting the strike settled before that hour. Since the Chief did perform at that time his official duties of protecting persons and property from threatened wrong and further disorder and disturbance by assisting, jointly with the Circuit Court Clerk and his Chief Deputy, the Union Leader in posting a bond for his incarcerated member, it must be that the Court's conclusion quoted above had reference to the fact that Chief Quigg did not, prior to his suspension, enforce the municipal ordinances and the criminal statutes of Florida by causing the arrest and punishment of

the striking bus drivers who were guilty of infractions of traffic laws, which is what charge *for* of the specification of charges against the Chief avers. We are lead to this conclusion in part by the fact that the record shows that the Director of Public Safety approved, in the presence of the City Manager, (both superior officers of the Chief,) Chief Quigg's method of settling the strike. The City Manager admitted that he was present with the Director of Public Safety in his office when Chief Quigg telephoned the Director and said, according to the City Manager's testimony, "Let me handle this. I will get it settled and don't get excited." (See brief, p. 44). The City Manager's memory failed him on the Director's reply to Chief Quigg, but Chief Quigg's undisputed testimony is that the Director replied, "O. K., if you need me I will be standing by." (See brief, p. 10).

We wish to sincerely urge, however, the consideration of these facts which show that it was impossible during the ten day period of time between the time of the bus strike and Chief Quigg's suspension by the City Manager, for him to cause the apprehension, arrest, and punishment of the striking bus drivers, guilty of law violations.

In the first place the City Manager immediately took the investigation of the bus strike and the strikers out of the hands of the Chief of Police and commenced his own investigation. It took him over a week with night sessions, and the assistance of five City attorneys, the County Solicitor, the Director of Public Safety, and the availability for subpoena serving of numerous police officers, for him to complete his investigation.

In the second place, the City Manager and the City Attorneys agreed during the course of their investigation that, since the County Solicitor would prosecute the strikers for violation of the State laws, that the City would not prosecute them for violating the Municipal ordinances (see Page 45 of the brief where this testimony of the City Manager appears). For this reason the bus strikers have never been prosecuted

by the City in the Municipal Court. Notwithstanding that the City Manager agreed during his investigation not to prosecute the bus drivers for violating the Municipal ordinances, yet, immediately at the close of his investigation, he suspended the Chief of Police for failure to arrest and cause the punishment of the strikers for violating these same municipal ordinances (See Charge No. 4). Also the City Manager blandly denies any intention to suspend the Chief because he did not prosecute the bus drivers for violating State laws, saying, "I am only interested in the Municipal ordinances." (See brief, P. 45). Yet charge No. 4 specifically suspends him for failure to do so.

In the third place, the City Manager prevented Chief Quigg from participating in the City Manager's investigation, or conducting an investigation of his own, because:

(a) When the Chief offered to help, he refused to let him and refused even to see him;

(b) He instructed the police officers who were subpoenaed before him not to discuss the matter with the Chief of Police (see brief, pp. 42-43);

(c) He tied up the witnesses by subpoena necessary for the Chief to interrogate, particularly the executive officers of the two transit companies, so that the Chief was unable during the City Manager's investigation to interrogate them and he had no opportunity after the investigation because the City Manager immediately suspended him.

Furthermore, the record shows that Chief Quigg began immediately, notwithstanding all these handicaps, to conduct an investigation, by instructing Police Officer, D. M. Kendall, Supervisor of Transportation, to immediately get a list of all bus drivers driving buses on the night of the strike. Since the Chief has had no power to subpoena, which the City Manager possessed under the Miami Charter, his investigation would naturally have taken as much, if not more

time than that of the City Manager, and he was in the process of collecting the necessary information to make his charges against the bus drivers when he was suspended. Surely ten days, under all circumstances, is an unreasonable time to require the Chief of Police to bring about the apprehension, arrest, and punishment of all the bus drivers, which is all the time he had between the night of the strike and his suspension from office, especially when the City Manager refused to cooperate with him in any manner.

We urge the Court most sincerely to read again our argument beginning on Page 37 of our brief which demonstrated, we earnestly insist, that Chief Quigg's conduct does not justify the conclusion of the Court quoted above. The law is clear, we submit, that where a police officer is making every reasonable effort to perform his duty, but is prevented from doing so by circumstances beyond his control, he is not subject to removal for neglect of duty.

In view of the premises, we pray for a rehearing.

RESPECTFULLY SUBMITTED:
E. F. P. BRIGHAM.
WORLEY & KEHOE,
BY: G. A. WORLEY,
ATTORNEYS FOR APPELLEE.

RECEIPT is hereby acknowledged of a copy of the above petition for rehearing of Appellee, this 11th day of August, 1945.

J. W. WATSON, JR., City Attorney.
By: SIDNEY S. HOEHL,
Assistant City Attorney,
City of Miami, Florida.

In the Supreme Court of Florida

JUNE TERM, A. D. 1945

MONDAY, SEPTEMBER 10, 1945

CHARLES O. NELSON, *Appellant*

vs.

STATE OF FLORIDA, ex rel.,

H. LESLIE QUIGG, *Appellee*

Counsel for Appellee having filed in this cause petition for rehearing and having been duly considered, it is ordered by the Court that said petition be and the same is hereby denied.

A True Copy

TEST:

GUYTE P. McCORD,

Clerk Supreme Court.

(COURT SEAL)

Supreme Court of the United States

OCTOBER TERM, 1945

NO._____

H. LESLIE QUIGG, *Petitioner*

vs.

CHARLES O. NELSON, *Respondent*

PETITION TO DISPENSE WITH PRINTING OF RECORD, OR, IN THE ALTERNATIVE TO PRINT AN ABBREVIATED RECORD.

Petitioner, H. Leslie Quigg, in the above cause, moves the Court for an order to dispense with the printing of the record in said cause, or, in the alternative, for an order for permission to print an abbreviated record as indicated below. In support hereof Petitioner alleges:

(1) The record is so voluminous it cannot be printed within the limitation of time prescribed by Section 8 of the Act of February 15th, 1925 (28 U.S.C.A., Par. 350), as extended by the order of the Supreme Court of the United States to February 5th, 1946, as Petitioner has been advised by the Clerk of said Supreme Court on January 3rd, 1946;

(2) All the original records in this cause which the Supreme Court of Florida had before it when it decided this cause have been transmitted by the Clerk of the Supreme Court of Florida to the Clerk of the Supreme Court of the United States, pursuant to the order of the Supreme Court of Florida dated November 19th, 1945, a true copy of which is hereto attached as Exhibit "A" and by reference made a part hereof;

(3) That for the then Appellant, Charles O. Nelson (the Respondent herein), the Supreme Court of Florida relaxed its rule requiring the record to be printed or typewritten and allowed the then Appellant, Charles O. Nelson (the Respondent herein), to file an abbreviated record of 85 pages containing only the pleadings of the parties and orders of the Circuit Court of Dade County, Florida. The balance of the record in said cause, including 1366 pages of testimony, 60 pages of exhibits, and all the original photographs, the Supreme Court of Florida allowed to be sent direct from the Circuit Court of Dade County, Florida, to said Supreme Court of Florida without being printed or copied, upon the ground that to require them to be either printed or copied would work undue hardship upon and cause the said Charles O. Nelson, the then Appellant, unreasonable expense if the Supreme Court of Florida rule were followed, all according to a true copy of said Supreme Court order attached hereto as Exhibit "B" and by reference made a part hereof;

(4) That counsel for both parties Petitioner and Respondent in this cause have complete copies of the record which is now lodged with the Clerk of the Supreme Court of the United States, being sent there by the Florida Supreme Court Clerk;

(5) That Petitioner's counsel have failed in a bona fide effort to delete over one-half of the record, in order that it might be printed within the time required by law, and, to that end, supplied counsel for the Respondent, Charles O. Nelson, with a complete list of the questions which they intend to raise in the United States Supreme Court upon their petition for certiorari, but counsel for the Respondent, Charles O. Nelson, have insisted on incorporating in the printed record testimony:

(a) Which was excluded by the City Commission which tried the Petitioner and which thereby eliminated it from the consideration of any Appellate Court;

(b) That had no bearing upon the questions which counsel for Petitioner intend to raise upon their petition for certiorari, copy of which questions were supplied counsel for the Respondent, Charles O. Nelson;

(c) Exhibits and photographs which are either irrelevant and immaterial, or which could be inspected by the Court since the originals are on file with the Clerk of the Supreme Court of the United States;

(6) That the insistence of counsel for the Respondent that so much of the record be printed prevents it from being printed in the time required by law;

(7) That all questions to be raised by Petitioner in his petition for certiorari are questions of law of which the testimony is not essential to their decision except one dealing with the good faith of the Petitioner in his actions on the night of the alleged bus strike, and that can be shown by incorporating in the brief appropriate quotations of testimony with appropriate references to the testimony now on file with the Clerk of the Supreme Court of the United States.

WHERFORE, the premises considered, it is respectfully prayed that this Honorable Court will enter an order dispensing with the necessity of printing of the record in this cause, or, in the alternative, that this Honorable Court will enter an order requiring to be printed only the pleadings of the parties and the orders of Court rendered both by the Circuit Court of Dade County, Florida, and by the Supreme Court of the State of Florida, and omitting from said printed record all exhibits attached to the information of quo warranto, including the testimony and proceedings stenographically reported before the City Commission of the City of Miami, and all documents, papers and photographs there offered and admitted in evidence by said City Commission, reserving, however, to the parties the privilege to

use said exhibits in support of or in opposition to the petition for certiorari to be filed by the Petitioner, H. Leslie Quigg.

Respectfully submitted,

E. F. P. BRIGHAM
221 Shoreland Building
Miami, Florida
WORLEY & KEHOE
By: Jack Kehoe
235 Shoreland Building
Miami, Florida
Counsel for Petitioner

JOSEPH A. PADWAY
Of Counsel

STATE OF FLORIDA,
County of Dade:

Personally appeared before me, the undersigned authority, H. LESLIE QUIGG, who being by me first duly sworn, deposes and says:

That he is the Petitioner in the above cause; that he has read the above and foregoing petition to dispense with printing of record, or, in the alternative to print an abbreviated record, and the allegations therein contained are true.

H. LESLIE QUIGG.

Sworn to and subscribed before me this 4th day of January, 1946.

(Notary Seal) Kathleen Penney.

Notary Public, State of Florida at Large.

My Commission Expires: September 25th, 1949.

EXHIBIT "A"

In the Supreme Court of Florida

JUNE TERM, A. D. 1945

MONDAY, NOVEMBER 19, 1945

CHARLES O. NELSON, *Appellant,*

vs.

STATE OF FLORIDA, ex rel.,

H. LESLIE QUIGG, *Appellee.*

Upon consideration of the petition of counsel for appellee for an order directing the Clerk of this Court to transmit to the Clerk of the Supreme Court of the United States the original exhibits filed in this cause for the purpose of making a printed record for the United States Supreme Court, in appellee's petition in that court for writ of certiorari, it is ordered that the Clerk of this court be and he is authorized and directed to transmit said exhibits to the Clerk of the United States Supreme Court on request of counsel for appellee on condition that said original exhibits, after disposition of the petition for writ of certiorari, be returned by the Clerk of the United States Supreme Court to the Clerk of this Court.

A True Copy

TEST:

(COURT SEAL)

GUYTE P. McCORD,
Clerk Supreme Court.

EXHIBIT "B"

In the Supreme Court of Florida

JANUARY TERM, A. D. 1945

WEDNESDAY, JANUARY 31, 1945

CHARLES O. NELSON, *Appellant,*

vs.

STATE OF FLORIDA, ex rel.,

H. LESLIE QUIGG, *Appellee.*

This cause coming on to be heard upon the verified petition of the appellant, Charles O. Nelson, for an order relating to sending up the original exhibits to the Supreme Court, and requiring the furnishing of only a part of the transcript of record to the appellee, and it appearing that the appellee has been duly notified of this hearing, upon consideration of this petition, it is considered, ordered, adjudged and decreed as follows:

1. That it has been made to appear that service of a complete copy of the transcript of record on the appellee would work an undue hardship and cause unreasonable expense on the appellant, Charles O. Nelson, and accordingly, the appellant may serve a true and correct copy of the transcript of record in this cause, upon the appellee, without copying therein, the transcript of testimony filed in the Trial Court; provided that if appellant's attorneys have an office copy of the transcript of testimony in a better state of preservation than the office copy of appellee's attorneys, that attorneys for the parties exchange copies thereof. The appellee's attorneys shall have the choice of said copies.

2. That it is necessary that the original exhibits filed in evidence in this cause, be inspected by the Supreme Court,

and therefore, all exhibits and records which were offered in evidence by either the appellant or the appellee, shall be transmitted to their original form as they were introduced at the trial in said cause, by the Clerk of the Trial Court to the Supreme Court of Florida, but said exhibits shall be held in the lower court until the briefs have been filed in the Supreme Court by both the appellant and the appellee, for inspection during the preparation of said briefs, and then transmitted to the Supreme Court to be placed with the Transcript of Record and considered as a part thereof.

A True Copy

TEST:

GUYTE P. McCORD,

Clerk Supreme Court.
(COURT SEAL)

Supreme Court of the United States

OCTOBER TERM, 1945

NO. 800

STATE EX REL. H. LESLIE QUIGG, *Petitioner*

vs.

CHARLES O. NELSON, *Respondent*

BRIEF OF PETITIONER

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Supreme Court of the United States

OCTOBER TERM, 1945

NO......

H. LESLIE QUIGG, *Petitioner*

vs.

CHARLES O. NELSON, *Respondent*

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

A.

The Opinion of the Court Below

The opinion of the Supreme Court of Florida is reported in 23 Southern Reporter (2d) 136 (not yet officially reported but a copy is attached to the certiorari petition).

B.

Jurisdiction

The statutory provision believed to sustain the jurisdiction of this Court is Title 28 U.S.C.A., Section 344 (b), (Judicial Code, Section 237 (b), as amended by the Act of February 13, 1925).

C.

The Federal Questions

1. Was Petitioner deprived of his property rights of office and pension without due process, in violation of the Fourteenth Amendment to the United State Constitution, when

three of the five members of the City Commission trying the Petitioner, after striking charge No. 7 against the Petitioner from the record, purported to reinstate said charge and to remove Petitioner from office thereon, because the Commissioner who cast the deciding vote for its reinstatement and removal of Petitioner thereon, did so, despite his declared "honest belief" that said charge should be stricken, because he was told to do this by a Miami newspaper?

(1) The Supreme Court of Florida necessarily passed upon this Federal question, though not by exrpess languare, because:

(a) Petitioner alleged in his quo warranto information:

> "that the attempted reinstatement of said Charge No. 7 by said City Commission against the Relator, and the removal of the Relator from his office on said charge No. 7, constitutes taking and depriving him of his property rights of office, and his pension rights to which he is lawfully entitled without due process of law, contrary to the 14th Amendment of the Constitution of the United States."*

(b) Respondent's demurrer to the information (Ground 34 thereof), averred inter alia**:

> ". . . . . that since the said relator was given an opportunity to be heard in his own behalf to produce any and all witnesses, the reinstatement of said Charge 7, and the hearing of evidence upon same, was, in all respects, valid, *constitutional* and in compliance with the Charter of The City of Miami."

(c) The Circuit Trial Judge, in his order and opinion overruling Respondent's demurrer, held***:

> "The several issues of law are projected out clearly, plainly, fully, and distinctly by the Information of Relator, H. Leslie Quigg, and by the Demurrer thereto of the Respondent, Charles O. Nelson."

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*Transcript of record, Page 20.
**Transcript of record, Page 42.
***Transcript of record, Page 57.

And also:

> "From the record, the Court here and now finds, concludes, decides, adjudicates, and rules, that the conviction of H. Leslie Quigg, Relator, and his removal from office, described in the record were each unreasonable, unjustified, contrary to right and justice, illegal, unconstitutional, and without foundation in fact or law, and were of no legal significance, importance, or consequence whatsoever, and were null and void acts."

(d) Respondent assigned as error in his appeal to the Supreme Court of Florida this ruling of the Trial Judge as follows:

> "The Court erred in entering its OPINION AND ORDER ON RESPONDENT'S DEMURRER TO RELATOR'S INFORMATION,"*

(e) The Supreme Court of Florida, in its opinion, said in referring to this assignment of error:

> "As to all other assignments of error and questions presented, we find, upon an examination of the entire record, no harmful or prejudicial error,"

and accordingly reversed the judgment of ouster of the Lower Court in favor of the Petitioner.

2. Interwoven with Federal question No. 1, and at the same time necessarily passed upon and decided by the Supreme Court of Florida adversely to the Petitioner, is whether the Petitioner was denied a fair trial under the circumstances mentioned in question No. 1 above, in violation of the Fourteenth Amendment to the United States Constitution, when disqualification of the Commissioner who brought about the reinstatement of said charge No. 7 and accomplished the removal of the Petitioner on said charge, was refused by said Commissioner, on Petitioner's timely motion therefor, when it became apparent that he had become unduly preju-

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*Transcript of record, Page 74.

diced and influenced against the Petitioner by reason of said newspaper.

3. Necessarily passed upon and decided adversely to the Petitioner by the Supreme Court of Florida, was Petitioner's contention in his quo warranto information that he was denied a fair trial by the City Commission when said Commission failed to apply a section of the Municipal Traffic Code which authorized the Chief of Police to exercise discretionary judgment in emergencies, and by sanctioning the removal of the Petitioner for non-enforcement of Municipal Ordinances which the City Manager, as chief executive officer of the City, ruled should not be enforced, and prevented the Petitioner from enforcing, by his arbitrary and capricious action in preventing him from securing necessary evidence to prosecute ordinance violators, said ordinances.

4. The Supreme Court of Florida denied the Petitioner a fair trial and deprived him of his property rights of office and pension, without due process of law in violation of the Fourteenth Amendment to the United States Constitution, when it reversed the Circuit Judge, who held Petitioner's removal from office unconstitutional and illegal, and affirmed his removal by the City Commission on the ground that the Petitioner should have enforced a penal statute of Florida against members of a labor union which it subsequently held had not been violated by such union members.

5. The Supreme Court of Florida, by its decision necessarily passed upon and decided that due process, as defined by the Fourteenth Amendment to the United States Constitution, did not require testimony of adverse witnesses, produced at Petitioner's trial before the City Commission, to be given under the sanctity of an oath.

6. The Supreme Court of Florida necessarily denied the Petitioner a fair trial and deprived him of his property rights of office and pension, without due process of law, in violation of the Fourteenth Amendment to the United States Constitution, by finding that the Petitioner's sole neglect

of duty consisted of matters and things of which he was expressly acquitted by the City Commission, contrary to the rule announced in the opinion that the Court could not substitute its judgment for that of the City Commission.

7. The Supreme Court of Florida necessarily deprived the Petitioner of the equal protection of the law, and deprived him of his property rights of office and pension, without due process of law, in violation of the Fourteenth Amendment to the United States Constitution, when they failed to follow the express provisions of the State statute requiring the removal of the Petitioner to be accomplished by a four to one vote of the City Commission, and sanctioned his removal from office on a three to two vote of said City Commission.

The authorities in support of these Federal questions sustaining the Supreme Court's jurisdiction we have incorporated in our petition for certiorari under the heading "B", entitled "Statement as to Jurisdiction." (See statement of case). A similar statement of cases appears under the heading "A" in the petition for writ of certiorari, and, in the interest of brevity, is incorporated here by reference.

D.

Specifications of Error

1. The Supreme Court of Florida erred in failing to hold with the Trial Court that a chief of police, protected from arbitrary removel by civil service provisions of a city charter, has been deprived of his property rights of office without due process of law, contrary to the Fourteenth Amendment to the United States Constitution, when he is removed from office on the ground of neglect of duty because, in good faith and in the exercise of his best judgment, he adopted lawful and peaceful means, as he was allowed to do under a City ordinance, to promptly dissolve a serious emergency and traffic hazard that paralyzed the public transportation system of two municipalities and threatened to suspend the municipal water supply, especially where he had no reasonable oppor-

tunity prior to his removal to cause the arrest and punishment of the offenders.

2. The Supreme Court of Florida erred in failing to hold with the Trial Court that a chief of police, protected from arbitrary removal by civil service provisions of a city charter, has been deprived of his property rights of office without due process of law, contrary to the Fourteenth Amendment to the United States Constitution, when, solely by reason of political pressure brought to bear on the commission by a newspaper hostile to the chief, the city commission after striking a charge against the chief of police, on their own motion reinstated the charge and removed the chief of police on the same.

3. The Supreme Court of Florida erred in failing to hold with the Trial Court that a chief of police, protected from arbitrary removal by civil service provisions of a city charter, has been deprived of his property rights of office without due process of law, contrary to the Fourteenth Amendment to the United States Constitution, when one of the commissioners who cast the deciding vote against him, refused to disqualify himself as one of the judges trying the then chief, upon the chief's timely motion therefor, when said commissioner was prejudiced and biased against the chief and unable, by reason of such prejudice, to give the chief of police a fair and impartial trial.

4. The Supreme Court of Florida erred in failing to hold with the Trial Court that a chief of police, protected from arbitrary removal by civil service provisions of a city charter, has been deprived of his property rights of office without due process of law, contrary to the Fourteenth Amendment to the United States Constitution, when the Supreme Court of Florida affirmed his removal on the ground that he had neglected his duty to enforce against union bus drivers a State law against strikes, which law they subsequently held had not been violated by the bus drivers.

5. The Supreme Court of Florida erred in failing to hold with the Trial Court that a chief of police, protected from

arbitrary removal by civil service provisions of the city charter, has been deprived of his property rights of office without due process of law, contrary to the Fourteenth Amendment to the United States Constitution, when the witnesses produced against him during his trial which resulted in his removal were not required, upon timely objection by the chief, to give their testimony under sanctity of an oath.

6. The Supreme Court of Florida erred in failing to hold with the Trial Court that a chief of police, protected from arbitrary removal by civil service provisions of the city charter, has been deprived of his property rights of office without due process of law, contrary to the Fourteenth Amendment to the United States Constitution, when the Supreme Court of Florida, notwithstanding its holding that a court could not substitute its judgment for that of a city commission trying a chief of police, nevertheless affirmed his removal from office and based the reason for its decision upon the subject-matter of a charge upon which the city commission found the chief not guilty.

7. The Supreme Court of Florida erred in failing to hold with the Trial Court that a chief of police, protected from arbitrary removed by civil service provisions of a city charter, has been deprived of his property rights of office without due process of law, contrary to the Fourteenth Amendment to the United States Constitution, and denied the equal protection of the law, contrary to said amendment, when the Supreme Court of Florida affirmed the chief's removal, notwithstanding that he was removed by less than a two-thirds vote of the city commission trying the chief which the statute governing such removal required.

E.

ARGUMENT.

First Specification of Error

1. Both by city ordinance and the general law the Chief of Police has discretionary power to assist labor union leaders to secure an appeal bond for an incarcerated union member in order to relieve a serious emergency.

(a) *Wilkes v. Dinsman*, 48 U. S. 89, 12 L. Ed. 618. Here the Court said, at Page 637:

> "In a case in this country (Jenkins v. Waldron, 11 Johns. 121), Spencer, J., says, for the whole court, on a state of facts much like the case in East: 'It would, in our opinion, be opposed to all the principles of law, justice, and sound policy, to hold that officers called upon to exercise their deliberate judgments are answerable for a mistake in law, either civilly or criminally, when their motives are pure, and untainted with fraud or malice.' Similar views were again expressed by the same court in the same volume, p. 160, in Vanderheyden v. Young. And in a like case, the Supreme Court of New Hampshire recognized a like principle. 'It is true,' said the Chief Justice for the court, 'that moderators may decide wrongly with the best intentions, and then the party will be without remedy. And so may a court and jury decide wrongly, and then the party will also be without remedy.' But there is no liability in such case without malice alleged and proved. Wheeler v. Patterson, 1 N. H. 90.
>
> "Finally, in this court, like views were expressed, through Justice Story, in Martin v. Mott, 12 Wheat. 31: 'Whenever a statute gives a discretionary power to any person, to be "exercised by him upon his own (*132) opinion of certain facts, it is a sound rule of construction that the statutes constitute him the sole and exclusive judge of the existence of these facts". 'Every public officer is presumed to act in obedience to his duty, until the contrary is shown'."

(b) *Section* 301 of Miami Traffic Code, Ordinance No. 2574 of The City of Miami, reads:

> "301. DUTIES OF POLICE. That hereafter it shall be the duty of Police Officers of this City to enforce the provision of this ordinance, and they are hereby vested with all the power and authority necessary for the enforcement thereof, provided that, in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, or when necessary to protect property, officers of the Police or Fire Divisions may direct, as conditions may require, contrary to the provisions herein contained."

(c) *State, ex rel. Kahle v. Rupert*, 99 Ohio St. 17, 122 N. E. 39. In this case the Court said, at Page 40:

> "Every officer of this state or any subdivision thereof not only has the authority but is required to exercise an intelligent discretion in the performance of his official duty."

(d) In *People v. Galpern*, 259 N. Y. 279, 181 N. E. 572, the New York Court of Appeals said at Page 572:

> "The duty of police officers, it is true, is 'not merely to arrest offenders, but to protect persons from threatened wrong and to prevent disorder. In the performance of their duties they may give reasonable directions.' People v. Nixon, 248 N. Y. 182, 188, 161 N. E. 463, 466. Then they are called upon to determine both the occasion for and the nature of such directions. Reasonable discretion must, in such matters, be left to them, and only when they exceed that discretion do they transcend their authority and depart from their duty."

(e) *People v. Nixon*, 248 N. Y. 182, 161 N. E. 463. At Page 466 of this case the Court said:

> "Police officers are guardians of the public order. Their duty is not merely to arrest offenders, but to protect persons from threatened wrong and to prevent disorder. In the performance of their duties they may give reasonable directions. Present at the point where the defendants were congregating they might early sense the possibility of disorder."

2. The City Manager ruled that the bus drivers should not be prosecuted for violation of municipal ordinances.* He also denied that he had suspended the Chief of Police for neglect of duty in not enforcing any state law.** The City Manager suspended the Chief of Police before he had any reasonable opportunity to arrest and cause the punishment of bus drivers violating municipal ordinances.*** The demonstration occurred on March 29th, 1944, and the Petitioner was suspended on April 10th, 1944. The City Manager hindered the Chief of Police from getting the necessary

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*Transcript, Page 304.
**Transcript, Page 305.
***Transcript, Page 313.

evidence to cause the arrest and punishment of those responsible for the emergency condition which was created by:

(1) Refusing to let him participate in the City Manager's investigation;* (1)

(2) Instructing police witnesses not to discuss the matter with anyone;* (2)

(3) Tying up all essential witnesses on an independent investigation of his own;* (3)

Under these circumstances, the Chief of Police cannot be guilty of neglect of duty in failing to enforce municipal ordinances.

(a) *McCarthy v. Board of Alderman of the City of Central Falls*, 38 R. I. 385, 95 A. 921. In this case the Court said, on Page 924 of 95 Atlantic, in the case of a police officer removed for failure to enforce the law:

> "The gist of the charges is the petitioner's failure to do certain acts which it is implied he could have done and ought to have done as part of his official duties. Both the duty and the ability to perform the acts must be shown in order to establish the charge of official misconduct. If he did all that he could reasonably be expected to do in the premises, and if the acts required to be performed could only be done by virtue of legal process, for the granting of which no legal reason was known to exist, or if the issuance of process was refused by those having authority to do so upon his application therefor in good faith, there would be no misconduct in failing to perform the acts named in the

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*Judicially admitted by failure to deny. See Par. VIII, quo warranto information, Tr. 11, et seq.

(1) Exhibit A, Vol. II, 298, 312-313, 335; Vol. III, 744.
(2) Exhibit A, Vol. II, 280; Vol. III, 744.
(3) Exhibit A, Vol. II, 346-347.

charges. As a result of examining the evidence, therefore, we are of the opinion that there was no evidence to sustain the decision of the board of alderman. The evidence shows that the petitioner promptly applied first to the clerk and then to the justice of the district court of the Eleventh Judicial District, in which the city of Central Falls is situated, for warrants against the persons named in the first two charges against him, accompanied by a statement of evidence as contained in the police officers' reports, and that both clerk and justice declined to issue warrants against those persons. The justice and clerk both testified to this. As to these charges there is no evidence of dereliction of duty on the part of the petitioner."

(b) In the case of *Hanna v. Board of Alderman of the City of Pawtucket*, 54 R. I. 392, 173 A. 358, the Court said, on Page 360 of 173 Atlantic, in speaking of the removal of a police officer for misconduct for neglecting to perform certain acts of official duty:

"To establish the charges of misconduct, both the duty and the ability to perform the acts required must be shown. McCarthy v. Alderman, Central Falls, supra. Petitioner made his reports regularly to the mayor who was his superior officer, and followed the instructions of the mayor and the board of alderman as he understood them. In many instances he was unable to secure warrants on his complaints. The reason for the refusals to issue warrants was stated by the clerk of the court to be that the policy of the court and of the city officials was that for a time infractions of the liquor law should be dealt with by securing a revocation of the license of the lawbreaker rather than by prosecution in the courts.

With respect to petitioner's failure to act against the proprietor of the saloon at 182 Pleasant street, the evidence shows that for several months this man was permitted by the license commission to conduct his business without a license on his promise to pay the license fee in installments. This action of the board was without legal warrant. Having thus countenanced infractions

of the liquor laws at this location, the board cannot properly hold the petitioner responsible for the failure to prosecute such other infractions of the license law as the board selected. For the reasons stated, the respondents' motion to dismiss is denied."

Second and Third Specifications of Error

The facts which are germane to these specifications of error are set forth in Paragraph 4 of the petition for certiorari, under the heading "A", entitled "Summary Statement of Matters Involved" and are referred to herein by reference.

The reinstatement of charge No. 7 by three members of the Miami City Commission, and the removal of the Petitioner on said charge by reason of the political pressure of two editorials of the Miami Herald, and the refusal of Commissioner Hosea, after he had been reached by said editorials into casting the deciding vote to reinstate this charge and to remove the Petitioner on this charge, denied the Petitioner a fair trial and deprived him of his property rights of office and pension without due process of law, contrary to the Fourteenth Amendment to the United States Constitution. The Court will find the editorials of the Miami Herald which influenced Commissioner Hosea into casting the deciding vote to reinstate said charge No. 7, and his declaration showing that he had been reached by said newspaper, and the attempts of the Petitioner to disqualify him, all to be included in Paragraph IX of the quo warranto information on Pages 13 to 21 of said transcript, inclusive.

The following authorities support the rule that under these circumstances the Petitioner was denied a fair and impartial trials and deprived of his property rights of office and pension without due process of law, contrary to the Fourteenth Amendment to the United States Constitution:

(a) *State, ex rel, Felthoff v. Richards* (1932), 203 Ind. 637, 180 N. E. 596.

(b) *Miles v. Stevenson*
(1894), 80 Md. 358, 30 Atl. 646.
(c) *Delaney v. Board of Fire Com'rs of City of Detroit*
(1928), 244 Mich. 64, 221 N. W. 283.
(d) *Packwood v. Riley,*
196 N. Y. Supp. 743.
(e) *People v. Riley,*
(1922), 232 N. Y. 283, 133 N. E. 892.
(f) *Rosecrans v. Town of Westfield, et al,*
(N. J. 1919) 157 A. 146.
(g) *Kelly v. Bishop, et al,*
(N. J. 1922), 119 Atl. 6.
(h) *In re Greenebaum*
(1911), 201 N. Y. 343, 94 N. E. 853.
(i) *Ryan v. City of Everett, et al,*
(1922), 121 Wash. 342, 209 P. 532.
(j) *People, ex rel. Mitchell v. LeGrange, et al,*
(1896), 37 N. Y. S. 991, 2 App. Div. 444.
(k) *Coolidge, Mayor v. Bruce, District Judge*
(1924), 249 Mass. 465, 144 N. E. Rep. 397.
(l) *People, ex rel. Winspear v. Kreinheder, et al,*
(1921), 189 N. Y. S. 767, 197 App. Div. 887.
(m) *People, ex rel. Shires v. Magee*
(1901), 67 N. Y. S. 906, 57 App. Div. 281.
(n) *State Board of Funeral Directors and Embalmers v. Cooksey,* (1941), 148 Fla. 271, 4 So. (2d) 253..

Fourth Specification of Error

This specification invokes the Fourteenth Amendment to the United States Constitution by presenting the question of Petitioner being denied the equal protection of the law as provided in said amendment.

One of the charges of removal filed against the petitioner upon which he was removed from office was that the petitioner, as Chief of Police, failed to enforce a statute of the State of Florida. In the removal proceedings before the City Commission, the City Manager was ordered to furnish petitioner with a Bill of Particulars. The Bill of Particulars specify that the petitioner had failed to enforce the Florida No-Strike Law. (See Page 23, Volume I, Transcript of Testimony.) The No-Strike Law was referred to as Chapter 21968, Laws of Florida, 1941. This was error. It should

have been Chapter 21968, Laws of Florida, 1943. This law is also known as Section 481.09, F. S. A. (Florida Statutes Annotated).

The evidence in support of this charge discloses that one W. O. Frazier was president of a Miami Local Union of Bus Drivers and that the said Frazier and about one hundred other union bus driver members congregated at the Miami City Hall for the purpose of securing the release from custody of one of their union members, one C. F. Jaggears, who had that day been sentenced to a fifteen day jail sentence by the Municipal Judge of the City of Miami. (See Page 37 of Volume I of Transcript of Testimony).

The Supreme Court of Florida, in rendering its opinion, in the case of Nelson v. State, ex rel. Quigg, 23 So. Reporter, 2d, Page 136, among other things, stated:

> "We deem it sufficient to say that the answer to one of these questions is determinative of the case."

And thereupon, the said Supreme Court of Florida proceeded to determine whether or not the petitioner had or had not enforced Section 481.09, F. S. A., and in the opinion rendered by that Court, the Court held and adjudicated:

> "It is unnecessary to a proper determination of this controversy to detail the evidence which was before the City Commission. It is appropriate, nevertheless, at this moment, when the members of our armed forces dice with death on the far-flung battle fronts and our form of government, indeed our very existence, is being challenged by a large portion of the peoples of the earth, to refer as briefly as possible to the unbelievable situation which developed and was attendant upon the *MIAMI BUS DRIVERS' UNWARRANTED, UNOFFICIAL AND UNLAWFUL STRIKE*. This incident, coupled with its ramifications as disclosed by the evidence, presented ample justification for the ruling made by the City Commission. The congregation of buses about the courthouse in down town Miami, which was brought about by the *unauthorized* orders and directions of certain leaders of the *Bus Drivers' Union*, created a figurative

coronary thrombosis at the very heart of the metropolitan area. All parties to this controversy agree that a grave situation existed. Counsel for Quigg contend that he exercised his discretion and best judgment and should not have been removed even if his course had not been productive of satisfactory results. This was Quigg's position before the City Commission.

"But what course of conduct did Chief Quigg pursue? At the time of this strike *HE WAS THE PRINCIPAL LAW ENFORCEMENT OFFICER OF THE CITY OF MIAMI,* ****etc.

"During this *STRIKE,* according to Quigg's own testimony, he could have called to his assistance three hundred sixty-eight policemen within fifteen to forty-five minutes. **** etc.

"There were nine charges filed against the Chief of Police, two of which were quashed, he was acquitted on three and found guilty on four. The charges, on which the Chief of Police was convicted, accused him of neglect of duty by reason of his neglect and failure to enforce the Ordinances of the City of Miami and Criminal Statutes of the State of Florida; failure to bring about the apprehension, arrest and punishment of the persons who violated the said Ordinances and Statutes at and during the time of a *STRIKE* by the bus drivers in the City on the night of March 29, 1944, **** etc."

As has already been pointed out as disclosed by the Bill of Particulars filed, the Chief of Police was removed from office for failure to enforce the Florida No-Strike Law known as Section 481.09, F. S. A. That is one of the questions considered by the Supreme Court of Florida in reviewing the case of Nelson v. Quigg, Supra, as clearly appears from a reading of the opinion rendered. The opinion unequivocably finds that, as a matter of fact, an unwarranted, unofficial and unlawful strike was made by Miami union bus drivers on the night of March 29, 1944, and that Quigg did not arrest the so-called strikers for violating the above quoted section of the Florida Statutes and was thereby removed from office. The City Commissioners trying the petitioner on the charges preferred by the City Manager held and adjudicated in effect

that there was a strike on said date; that the strike was unlawful and that the strikers participating in said strike were violating Section 481.09, F.S.A., and that the Chief of Police ought to be removed because of his failure to enforce the said State Statute.

In the quo waranto proceedings, by which proceedings the petitioner was restored to office of Chief of Police after his removal, which removal the petitioner insists was illegal, the Circuit Court Judge in entering the judgment of ouster, in effect found that there had been no strike on said occasion, either lawful or unlawful. In reviewing the judgment of ouster, the Supreme Court of Florida reversed the finding of the learned Circuit Judge and affirmed the finding of the City Commissioners of the City of Miami to the effect that there had been a strike of these union bus drivers and that said strike was unwarranted, unofficial and unlawful, and that the participants of said strike were violating Section 481.09, F.S.A., and that, therefore, the judgment of ouster was reversed and set aside and the petitioner was ordered removed from office.

It clearly appears from the record in this case that one W. O. Frazier was the president of the Bus Drivers' Union allegedly participating in the unwarranted, unofficial and unlawful strike. It further clearly appears that upon the arrival of the petitioner to the scene of the demonstration on the night of the alleged strike, the petitioner sought out and contacted the said W. O. Frazier as president of the Bus Drivers' Union, and other persons. It further clearly appears that if it was the duty of the petitioner to arrest anyone for violating Section 481.09, F.S.A., on said ocassion, W. O. Frazier, one of the leaders and one of the participants in said demonstration and the president of the union so participating, was one of those persons whom the petitioner should have arrested; that this is so, there can be no dispute. As the petitioner in his testimony testified that upon arriving at the scene, that he did contact Frazier; that Frazier made known to the Chief of Police his alleged grievance; that, thereupon, the petitioner, as Chief of Police, pointed out

to the said Frazier the provisions of Section 932.52, F.S.A., which provides that any person convicted of any offense in any Municipal Court (in the State of Florida) may appeal from the judgment of such Court to the Circuit Court of the county in which the conviction took place within thirty days after the conviction, and that the person so appealing shall enter into a bond for double the amount of the fine and costs assessed, or, if the judgment be one of imprisonment for a term in jail of said municipality, then the bond shall be in an amount sufficient to cover all costs taxed in the Circuit Court on appeal, plus not less than $10.00 nor more than $200.00 additional in the discretion of the Mayor or the Municipal Judge, with one or more sufficient sureties to be approved by the Clerk of the Circuit Court. And the said Section of the Statute further provides for the terms and conditions of said bond. The said Frazier explained to the petitioner that the Municipal Judge had declined to set a bond.

When the said Frazier stated his willingness to enter into such bond as provided by State Law, the petitioner called to his office the Clerk of the Circuit Court. The bond was thereupon executed, posted and approved, and the incarcerated Jaggears was released on appeal and the demonstration ended. So, there can be no question but that the petitioner did contact the said Frazier. It is also admitted here, as well as in the record, that the petitioner did not arrest or attempt to arrest W. O. Frazier for violating the Florida No-Strike Laws, Section 481.09, F.S.A. However, the said W. O. Frazier was subsequently informed against by the County Solicitor, the state prosecutor of all violations of state criminal law less than capital cases, and that the said W. O. Frazier was, based upon the facts and happenings on the night of March 29, 1944, and relating to the demonstration of said bus drivers, charged with violating Section 481.09, F.S.A., and, upon the arrest of the said Frazier on said charge, be sued out in the Circuit Court of Dade County, Florida, a petition for a writ of error. Upon a hearing before the Circuit Judge, the said Frazier was remanded to the

custody of the respondent sheriff. Being dissatified, the said Frazier sued out an appeal to the Supreme Court of Florida. See State, ex rel Frazier, v. Coleman, Sheriff, 23 So. 2d, 477. By the issues presented in the habeas corpus proceedings, the Supreme Court of Florida was required to and did determine whether or not the said W. O. Frazier had violated the Florida No-Strike Law, Section 481.09, F.S.A., and the Supreme Court of Florida in so doing, held and adjudicated:

> "The charge in the information involved in this appeal is that the appellant and the other 98 named defendants unlawfully agreed, conspired, combined and confederated between themselves to, and did actually participate in 'a strike, walkout and cessation of work and continuation thereof without the same being authorized by a majority vote of the employees to be governed thereby,' contrary to the provisions of chapter 21968, Laws of Florida, 1943, F.S.A., and Section 481.01, et seq., F.S.A."

The above quoted part of the Florida Supreme Court decision contains the verbatum language of the information upon which the said Frazier was arrested. The opinion recites that the charge grew out of the demonstration wherein the union bus drivers were attempting to secure the release of one C. L. Jaggears. From a reading of the opinion in the case of Nelson v. Quigg, Supra, and the case of Frazier v. Coleman, Supra, it clearly and unequivocally appears that the time and place discussed in those two opinions is the same identical incident or demonstration. The Florida Supreme Court, in determining whether or not the said Frazier had as a matter of fact violated the said Florida No-Strike Law, further held and adjudicated in its opinion that:

> "Chapter 21968, Laws of Florida, 1943, purports to be an act to regulate the activities and affairs of labor unions, their officers, agents, organizers and other representatives. Section 9 of the act prohibits members of a labor union from participating in any 'strike, walk-out, or cessation of work or continuation thereof without the same being authorized by a majority vote of the employees to be governed thereby'. The word 'strike' is not defined in the statute; consequently in the absence of a

legislative definition at variance it must be presumed that the legislature intended to use the term in its plain and ordinary signification. Smith v. State, 80 Fla. 315, 85 So. 911; State v. Tunnicliffe, 98 Fla. 731, 124 So. 279. The commonly understood meaning of the term is: 'Act of quitting work; specif., such an act done by mutual understanding by a body of workmen as a means of enforcing compliance with demands made on their employer; a stopping of work by workmen in order to obtain or resist a change in conditions of emplyoment'. (And authorities therein cited.) As is indicated by the definition, the term ordinarily connotes a movement growing out of problems arising between the employee and the employer class, relating to hours, wages, or employment conditions, in the course of which there is a concerted suspension of employment by the employees for the purpose of enforcing certain demands against the employer, or employers. As Teller points out in his work entitled 'Labor Disputes and Collective Bargaining,' the outstanding characteristics of the strike, as that term is employed in modern times, are (1) an established employer-employee relationship between the strikers and the person or persons against whom the strike is called; (2) the existence of a dispute between the parties and the resort by labor to the weapon of concerted refusal to work as a means or method of persuasion or coercion to accomplish the employees' demands; and (3) the contention on the part of the employees that although work has ceased the employer-employee relationship continues, albeit in a state of belligerent suspension. Teller, Labor Disputes and Collective Bargaining, Vol. 1, Sec. 78, p. 236.

"It takes no more than a cursory examination of the information under attack to ascertain that the facts alleged do not present a case that may be prosecuted under the statute involved, for the elements essential to a strike are not present. There was no employer-employee relationship between the disputants. There was no existing controversy between the bus drivers and their employers as to hours, wages, or conditions of labor. The enterprise was not conceived for the purpose of forcing the employers, individually or as a class, into compliance with any demands made by such employees. The venture was not set in motion to punish employers or to better the working conditions of employees generally. The actions of the appellant and his misguided

companions in storming the municipal judge's chambers for the purpose of procuring the release of Jaggears—though thoroughly reprehensible and subject to censure—did not, therefore, constitute a strike but was a contumacious and lawless act directed against the municipal court of Miami and its authority in defiance of law and order, with none of the characteristics of a labor betterment movement."

Thus, we see that the Supreme Court of Florida, in reviewing the facts surrounding the activities of the said Frazier and other members of the union bus drivers, adjudicated and held that said acts were not and did not constitute a strike; that this is so is academic and, as pointed out in the above quoted opinion, a laborer can only strike against his employer. He cannot strike against some third person unconnected with his employer. When the petitioner arrived at the scene of this demonstration and asked the leader of the demonstration, Frazier, what was the complaint and, when informed that the union leaders were seeking the release from imprisonment of a fellow member, the Chief of Police, petitioner, from his many years as Chief of Police and law enforcement officer, immediately recognized that there was no strike, either lawful or unlawful. The petitioner knew almost as if by instinct that the Florida No-Strike Law, Section 481.09, F.S.A., had not been violated and that he could not successfully prosecute Frazier thereunder. That his judgment was correct is borne out by the opinion of the Supreme Court of Florida rendered in the case of Frazier v. Coleman, Supra.

Justice Brown, of the Florida Supreme Court, in dissenting, held and adjudicated:

> "Under the facts alleged in the information in this case, Sec. 9(3) of Chapter 21968, F.S.A., Sec. 481.09 (3), is inapplicable, and it is unnecessary, and would indeed be inappropriate, for this court to express any opinion as to the constitutional validity of said statute."

That the petitioner here was denied the equal protection of the law is clear and apparent from the reading of the two

above cited opinions and judgments of the Florida Supreme Court. The opinion in the case of Nelson v. Quigg, Supra, was rendered on July 24, 1945, and petition for rehearing was denied on September 10, 1945. The opinion and judgment of the Florida Supreme Court in the case of State, ex rel Frazier v. Coleman, Supra, was rendered on October 5, 1945.

Thus, we have the unusual and unreasonable situation of a Chief of Police being removed from office because of his failure to arrest one W. O. Frazier for violating Section 481.09, F.S.A., and on the other hand, the said W. O. Frazier, being discharged on Habeas Corpus because the same identical acts committed by the said Frazier did not constitute a violation of the said statute. This is not a question of a Supreme Court decision construing a State Statute upon different facts, but is a situation wherein the State Court of last resort says that the same identical acts committed by the same identical person constitute a violation of a State Statute in one case, and in the other case says that the said acts committed by the said persons do not constitute a violation of the said statute.

It clearly appears from a reading of the two cited cases that there was no strike either lawful or unlawful and, had the petitioner here been granted the equal protection of the laws of the State of Florida, he would not have been removed from the office of Chief of Police of the City of Miami because of his failure to arrest W. O. Frazier and charge the said Frazier with violating Section 481.09, F.S.A.

We sincerely and respectfully insist that the petitioner's constitutional rights have been invaded and violated and that the invasion and violation was accomplished by a denial to the petitioner of an equal protection of the laws.

Fifth Specification of Error

At the hearing before the City Commissioners on the charges, the witnesses appearing to testify against the Peti-

tioner were sworn by the Mayor acting as Chairman of the Commission. At these proceedings, the Petitioner objected to the witnesses testifying and also moved to strike the testimony of the respective witnesses because of the lack of any legal authority on the part of the Mayor to administer an oath. The City Charter of the City of Miami does not confer on the Mayor any power to administer an oath; the Statutes of the State of Florida do not empower a Mayor of a municipality to administer oaths, except when he is presiding as a judge of the municipal Court in trying offenses against the ordinances of such city or town. This Court, in the case of the United States v. Curtis, 107 U. S. 671, 2 S. Ct. 501, 27 L. Ed. 534, said:

> "It is fundamental in the law of criminal procedure that an oath before one who has no legal authority to administer oaths of a public nature, or before one authorized to administer some kind of oaths, but not the one which is brought in question, cannot amount to perjury at common law, or subject the party to taking it to prosecution for the statutory offense of wilfully false swearing. 1 Hawk, P. C. b. 1., C. 27, Par. 4, p. 430 (8th Ed. by Curwood); Roscoe, Cr. Ev. (7th Am. Ed.) p. 817; 2 What. Crim. Law, Par 221; 2 Arch Crim. Pr. and Pl. (8th Ed p. 1722)."

The Florida Supreme Court in the case of Campbell v. State, Florida (1926) 109 So. page 809, held that statutes conferring the authority to administer oaths upon officials who had no such authority under the common law should be construed strictly, and in that case said:

> "It seemeth clear that no oath whatsoever, taken before a person acting merely in private capacity, or before those who take upon them to administer oaths of a public nature without legal authority for their so doing, or before those who are legally authorized to administer some kind of oaths, but not those which happen to be before them, or even before those who take upon them to administer justice by virtue of an authority seemingly colorable, but in truth unwarranted and merely void, can ever amount to perjuries in the eye of the law, because they are no manner of force, but are altogether idle."

and quoted the Supreme Court of the United States in the Curtis case. The question therefore arises: Was an oath necessary in this particular kind of proceeding? We think this question is well answered by the New York Court of Appeal, in the case of Kasschau v. Board of Police Commissioners of the City of New York, 155 N. Y., 40, 49 N. E. 257. In that case the New York Court said:

> "The relator was not subject to removal except for some legal cause, to be ascertained and adjudged as matter of fact upon a hearing. This contemplates a judicial investigation, in which there must, at least, be some legal responsibility for perjury, or some protection to the accused against falsehood. The issue to be determined was one of fact. The proceeding was judicial in character, and hence the tribunal before which the investigation was had could not dispense with the usual form of procedure by acting upon statements not given under the responsibility of an oath. When the Court proceeded to judgment without the observance of such an essential prerequisite to every judicial inquiry, the determination was not judicial in character, or such as the statute contemplates. While some latitude is allowed with respect to the rules of evidence, yet, to remove a party from a public office, upon a charge involving a question of fact, without even swearing the witnesses, is to abandon the fundamental form of judicial action. A determination thus made is not the result of a trial or a hearing, in any proper sense, and hence the relator was removed from office without such a trial or hearing as the law contemplates. The statute confers power upon the defendants to formulate rules for the government of their proceedings, and one of the rules enacted under this power provides that the testimony upon such a hearing must be on oath, except in trivial cases. t would be difficult to show that they have power in any case, when acting in a judicial character, to enact a rule dispensing with an oath to witnesses, since such a rule would be repugnant to the very nature of a trial or hearing. But, however that may be, it is safe to assert that a proceeding which results in the removal of a person from office cannot well be called a trivial case. If the charge was trivial, the punishment was not. The judgment was that the relator should be removed from the force, and this was the highest penalty that the defendants had the power to inflict. So that, if this was a trivial case, then all such cases, resulting in the same

determination, must be trivial, whatever may be the nature of the charge. When a party is protected in the enjoyment of a public office or employment, from removal except for cause, to be ascertained and adjudged upon a hearing of a judicial nature, and it appears that he has been removed without any proof of the necessary facts upon oath, the determination, if not absolutely without jurisdiction, is clearly erroneous, as matter of law. It is no answer to this objection to say that the relator did not require the witnesses to be sworn, or that he failed to take any exception to the proceeding. The burden of making out the case was upon the prosecution. The accused may remain silent, and the omission of the relator in this case to interfere with the duties of the commissioners cannot cure the defect referred to."

This question was squarely presented to the Supreme Court of the State of Florida by the information, demurrer thereto, and the decision of the Lower Court,* but was altogether ignored. The Court did not recede from its previous decisions but simply denied to the Petitioner the equal protection of the law by ignoring this question and removing him from his office for the sole reason that the Supreme Court thought he had shown too much consideration to the labor union.

Sixth Specification of Error

This specification, upon being carefully analyzed, clearly demonstrates that the Supreme Court of Florida did deny to this petitioner the equal protection of the laws and by so doing has deprived this petitioner of the benefits and guarantees contained in the Fourteenth Amendment to the United States Constitution.

The law of the State of Florida, as it has existed for many, many years and as was stated in the Supreme Court opinion in the case of Nelson v. State, ex rel Quigg, Supra, is, quoting said Supreme Court:

"We have held, and it seems to be an almost universal

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*Par. XI, quo warranto information, Transcript 23.

> rule, that the findings of fact made by an administrative board, bureau, or commission, in compliance with law, will not be disturbed on appeal if such findings are sustained by substantial evidence. Hammond v. Curry, 153 Fla. 245, 14 So. 2d, 390; Jenkins v. Curry, Fla., 18 So. 2d, 521; Callahan v. Curry, 153 Fla. 744, 15 So. 2d, 668; Marshall v. Pletz, 317 U. S. 383, 63 S. Ct. 284, 87 L. Ed. 348; Virginia Electric & Power Co. v. National Labor Relations Board, 319 U. S. 533, 63 S. Ct. 1214, 87 L. Ed. 1568; Broxson v. State, 99 Fla. 1187, 128 So. 628; Smith v. Midcoast Inv. Co. 127 Fla. 455, 173 So. 348; Marcus v. Hull, 142 Fla. 306, 195 So. 170."

Notwithstanding the fact that the Supreme Court of Florida stated the law applicable to an appeal court reversing findings of an administrative board, the Supreme Court of Florida proceeded to do just exactly what the opinion said was prohibited in this state.

Ground No. 3 in the specification of charges preferred against the petitioner by the City Manager of the City of Miami, reads as follows:

> "3. You are guilty of misfeasance in the office of Chief of Police in the Division of Police of the City of Miami, Florida, by reason of the fact that, in violation of your oath of office, you devoted your time and your energies at and during the time of a strike of bus drivers in said City on the night of March 29, 1944, to meeting the demands of the leaders of the drivers, who were violating in your presence and under your observation the ordinances of said City and the criminal statutes of the State of Florida, and in aiding and abetting said leaders to effect the release from the City jail of a prisoner who had been lawfully convicted in the Municipal Court of said City and had been lawfully sentenced to imprisonment in said jail."

The City Commission of the City of Miami, the administrative board, having heard the evidence offered by the City Manager in support of said charge, did, by a four to one vote, find the petitioner not guilty of said charge and did acquit him thereon. Then, the Supreme Court of the State of Florida, denying to the petitioner the equal protection of the law, proceeded

to review and to reverse the finding of the City Commission of the City of Miami, finding the petitioner not guilty of Charge 3, when the Court used the following language in its opinion in reversing the Circuit Court:

> "Quigg was either incompetent as aforementioned or deliberate in the avoidance of his immediate duties. It appears that all the rest of his time and energies were devoted not to law enforcement or official duties but to a course of conduct prescribed, required and demanded by the leaders of the bus drivers' union. His conduct can be best described by the word which has become known and accepted universally as a synonym for the surname Chamberlain.
>
> "Fault is not to be found so much with the Chief because he assisted in securing the release on bond of a bus driver who had been incarcerated lawfully, an act which to the most fantastic mind does not come within the purview of his official duties, but rather that he failed to perform his duties and became an appeaser to the extent that he knuckled under to the intimidating demands and requirements of those whose conduct evidenced the fact that they would supplant law and order with mob violence."

Thus, it clearly appears that the Supreme Court of Florida substituted its judgment for the judgment of the City Commissioners trying the petitioner and found that the petitioner was guilty of Charge 3. We respectfully submit that this clearly constitutes a denial to the petitioner of an equal protection of the law.

It cannot be said that the Circuit Court Judge in entering the judgment of ouster, substituted his judgment of the sufficiency of the evidence for the judgment of the City Commissioners. The petitioner filed an information in the nature of a quo warranto. In Paragraph 10 of the Petition for quo warranto, the petitioner alleged the prejudice particularly of Commissioner Hosea and denied that he had received a fair trial because of the prejudice of said commissioner.

Paragraph 11 of the Petition for quo warranto alleged

the invalidity of the proceedings before the City Commission because the testimony of witnesses on behalf of the City Manager was not given under the sanctity of an oath and that the Mayor of the City of Miami did not have lawful authority delegated to him to administer an oath.

Paragraph 12 of the Petition for quo warranto alleged that the removal of petitioner by the City Commission was illegal and void because said removal was accomplished by a three-fifths vote, whereas the laws of the State of Florida provide that such removal shall only be done upon a two-thirds majority vote of the commissioners trying the accused.

To this Petition for quo warranto, the respondent Nelson interposed and filed a demurrer, the demurrer testing the legal sufficiency of the pleading. The office of a demurrer is to raise questions of law; questions of fact not being raised by a demurrer, but only by plea or answer. When the demurrer, interposed by the respondent Nelson, was argued before the Circuit Court Judge, the said Circuit Judge, in sustaining the demurrer, found:

> "From the record, the Court here and now finds, concludes, decides, adjudicates and rules that the conviction of H. Leslie Quigg, relator, and his removal from office described in the record, were each unreasonable, unjustified, contrary to right and justice, illegal, unconstitutional and without foundation in fact or law, and were of no legal significance, importance or consequence whatsoever and were null and void acts.
>
> "The several issues of law are projected out clearly, plainly, fully and distinctly by the information of relator, H. Leslie Quigg, and by the demurrer thereto of the respondent, Charles O. Nelson.
>
> "The information is not amenable or subject to any ground of said demurrer and said demurrer should be overruled."

Whereupon, the Circuit Judge overruled the demurrer. It was not necessary and the Circuit Judge did not, or did not at-

tempt to, substitute his judgment or interpretation of the evidence for the judgment or interpretation given by the City Commissioners. The Circuit Court rule was in accordance with the rule of law previously stated in this portion of the brief. The Circuit Judge gave an equal protection of the law to both the petitioner and the respondent.

The Supreme Court of Florida, in entering its judgment of reversal, recited in its opinion:

> "Many questions have been posed for our consideration and to aid us in a proper determination of this controversy. We deem it sufficient to say that the answer to one of these questions is determinative of the case. As to all other assignments of error and questions presented, we find, upon an examination of the entire record, no harmful or predudicial error."

In the appeal proceedings, the respondent here was the appellant. It was Nelson, the respondent, who assigned errors that the Supreme Court of Florida was called upon to review. The respondent assigned as error:

1. That the Circuit Court Judge erred in not disqualifying himself.
2. That the Circuit Court Judge erred in overruling Nelson's demurrer to the information.
3. That the Circuit Court Judge erred in sustaining the petitioner's demurrer to the answer of Nelson.
4. That the Circuit Court Judge erred in entering judgment of ouster.

Thus, we see that an order of the Circuit Court Judge was assigned as error, the order being an order overruling a demurrer and holding that the conviction and removal of the petitioner were unlawful, unconstitutional and void acts on the part of the City Commissioners of the City of Miami. To this assignment of error, the Supreme Court of Florida says that same was neither harmful nor prejudicial. It therefore developed that the Supreme Court of Florida, in order to

reverse the judgment of ouster appealed from, was called upon to try de novo on a cold typed transcript the question whether or not the petitioner was or was not guilty of Charge 3 as preferred against the petitioner by the said City Manager and, having tried said charge de novo, the Supreme Court of Florida substituted its judgment for the judgment of the City Commission of the City of Miami and, by so doing, denied to your petitioner an equal protection of the law. We have attempted to point out the inconsistences of the opinion rendered by the Florida Supreme Court, not for the sake of showing the inconsistencies but to emphasize the flagrant denial to this petitioner of the guarantees guaranteed to him by the Fourteenth Amendment to the United States Constitution, that is, that petitioner was denied an equal protection of the law and thereby was deprived of his property rights, and we respectfully submit that this fact alone clearly indicates the illegality of the judgment of reversal of the Supreme Court of Florida and, because of such illegality, the said judgment ought to be quashed by the Supreme Court of the United States.

Seventh Specification of Error

This question, although presented squarely to the Supreme Court of the State of Florida by the Petitioner in his brief and in the argument of counsel, was wholly ignored, as were many other questions presented and argued. The Florida Supreme Court, in the case of State ex rel Gibbs vs. Bloodworth, 134 Fla. 369, 184 So. 2, construing the City Charter under the provisions of which the Petitioner was removed from office, held that where the Charter was silent as to the method of removal of an officer, the general laws of the State should apply. Section 165.18, of the Florida Statutes 1941, provides:

> "The city or town council may judge of the election returns and qualifications of its own members, make such by-laws and regulations for their own guidance and government as they may deem expedient and enforce the same by fine or penalty, and compel attendance of its

members; and two-thirds of the council may expel a member of the same or other officer of the city or town for disorderly behavior or malconduct in office."

Certainly, three-fifths does not equal two-thirds; and as the City Charter is silent as to the number of votes necessary to remove the Chief of Police, then the same reasoning as applied by this Court in the case of Gibbs vs. Bloodworth would apply. Section 26. of the Charter of the City of Miami provides only that the City Commission shall hear such charges and render judgment thereon. Nowhere in the Charter is it specified the number of votes necessary for the City Commission to act, except when they do so by Ordinance or Resolution. The City Charter does provide that a majority of votes is necessary on all Resolutions and Ordinances, that a four-fifths vote is necessary on any Ordinance that is enacted as an emergency measure; but the Charter is utterly silent as to the number of votes necessary for the City Commission to render a judgment in hearings judicial in their nature. And, as the Florida Supreme Court did not recede from its position taken in the case of State ex rel vs. Bloodworth, it certainly denied the Petitioner the equal protection of the law. We are advised of the position that this Court has taken in several cases where it has held the Fourteenth Amendment does not assure uniformity of judicial decision from a precedent established by earlier decisions, and does not deprive the complaining party of the due process of law, but, in this case the Florida Supreme Court did not see fit to depart from established precedents or recede from its former decisions, but simply ignored the contentions made by the Petitioner, left the precedents established but denied to the Petitioner the benefit of them.

Conclusion

It is clearly submitted that, by virtue of the matters and things set forth in the petition and brief, and the authorities therein cited, Petitioner has been denied and deprived of his property rights of office and pension guaranteed and secured

to him under the United States Constitution and that the decision of the Florida Supreme Court should be reversed.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1945

NO. 800

H. LESLIE QUIGG,
Petitioner,

vs.

CHARLES O. NELSON,
Respondent.

BRIEF OF RESPONDENT OPPOSING PETITION FOR WRIT OF CERTIORARI AND OPPOSING PRINTING ABBREVIATED RECORD

HISTORY OF THE CASE

In March, 1928, the Petitioner, H. Leslie Quigg, was suspended as Chief of Police of the City of Miami, because of the fact that he had been indicted upon a criminal charge by a local Grand Jury, and upon the additional grounds of neglect of duty, and for the good of the service. The City Commission at that time, after investigation and hearing, found Petitioner guilty and removed him from office. In August, 1931, Petitioner Quigg brought an action in Quo Warranto to regain his office

as Chief of Police of the City of Miami. One of his attorneys in this action was the Honorable Ross Williams, who presided as Judge in our local Circuit Court in the present proceedings and who ruled in favor of Quigg. This Respondent asserted these facts as grounds for disqualification against Judge Williams and assigned as error his Order denying the Application to Disqualify.[1] Petitioner was unsuccessful in his suit for reinstatement on this prior occasion, as now, even though he prosecuted it also to the Supreme Court of Florida.[2]

On July 8, 1937, however, immediately following the election to office of a locally termed "Termite" Commission, which was recalled from office by the people of the City of Miami less than two years after its election, Petitioner Quigg was appointed Chief of Police of Miami for the second time.[3]

Within a short period of time after Petitioner was reappointed to the office of Chief of Police as hereinabove set forth, the Division of Police became infected with discord, disunity, and strife which impaired the efficienty of the organization, and which was created through the failure of Petitioner Quigg to properly perform the functions and duties of his office.[4] It became inefficient and unreliable. The Division of Police became a veritable "hot-

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[1] Transcript of Record Pages 49 and 74.

[2] Quigg vs. Reeve, 106 Fla. 28, 142 So. 654.

[3] Exhibit A. Vol. V, pps. 1149, 1150, 1151.

[4] Exhibit A, Vol. II, pp. 427, 428, 444, 448, 459, 461, 462, 463, 465, 566, 567, 581, 593, 495, 499, 500, 501, 506, 507, 510; Vol. IV, pp. 1004, 1007, 1008, 1009, 1014, 1027, 1030; Vol. V, pp. 1125, 1137, 1141, 1148, 1149, 1150, 1154, 1155.

bed" of politics, with gambling prevalent throughout the City of Miami.[1]

This was the condition of the Division of Police under Petitioner Quigg when City Manager A. B. Curry was appointed to his office February 16, 1942. Numerous attempts were made by the City Manager to eradicate these conditions and to improve the police organization through administrative orders, without placing charges against Petitioner. The City Manager endeavored to eliminate the quarreling between Quigg and his vice-squad subordinate, Lieutenant C. O. Huttoe, by assigning Huttoe to duties connected with the National Defense work carried on by the Federal Bureau of Investigation, with Huttoe's offices outside the Police Station.[2] It was found, however, although the City Manager had given strict orders to Quigg to enforce the gambling laws, that gambling increased. He was forced, therefore, in order to insure the enforcement of the gambling laws to reassign Lieutenant Huttoe as head of the Vice Squad. Both Quigg and Huttoe then served as a check upon one another. Honorable Cecil Curry, Judge of our Municipal Court for approximately ten years, testified at the Quigg removal proceedings:

"Q. Kind of check on each other, aren't they. So they cannot have any favorite places?

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[1] Exhibit A, Vol. II, pp. 442, 444, 498, 499, 500; Vol. IV, pp. 937 985, 990, 1004, 1032, 1033; Vol. V, pp. 1122, 1123, 1137, 1141, 1151, 1152, 1156, 1157, and Exhibit A, Respondent's Exhibit 12, p. 16.

[2] Exhibit A, p. 38 of Exhibits.

A. They have been certainly embarrassing each other."[1]

On March 29, 1944, between the hours of 10:00 p. m. and 12:10 a.m., the public streets, thoroughfares and highways in and about the Dade County Court House and the Police and Fire Stations of the City of Miami, Florida, were blocked and obstructed as a result of a strike or demonstration of bus drivers, employees of the Miami Transit Company and the Miami Beach Railway. Busses were parked in the center of and diagonally across Flagler Street, main thoroughfare of Miami; across intersections; in front of the fire station so that it was blocked; private cars were hemmed into the curb; ingress and egress to the Court House was blocked, and several of the other public streets surrounding the Court House were crammed and blocked off with busses.[2] Numerous municipal traffic ordinances and a state statute prohibiting obstruction of public streets and highways were violated.

This strike or demonstration was called upon orders of W. O. Frazier, President of the Bus Drivers' Union, of which the striking bus drivers were members, in an attempt to force the Municipal Judge of Miami to change a jail sentence imposed upon one of the members of the union for assault and battery committed against a taxi driver; such sentence having been imposed by Judge Cecil Curry of the Municipal Court of the City of Miami on the morning of March 29, 1944, who testified it was one of the most brutal cases to come to his attention in ten

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[1] Exhibit A, Vol. IV, Pg. 1000.

[2] Exhibit A, City Exhibits Nos. 1, 3, 4, 5, 6, 7, 8 and Exhibit A, Vol. I, pp. 63, 64, 67, 68, 69, 70.

years as Judge.[1] As an excuse for the strike or demonstration, Frazier, union leader, informed the Petitioner and drivers that he had been unable to obtain an appeal bond for the convicted bus driver and had offered as much as $10,000. in cash to procure said bond, but that City officials had refused to accept a bond in any sum.[2] Statutes of Florida fix the maximum appeal bond from a Municipal Court at two hundred dollars ($200.00), which fact Petitioner should have known or did know. The Petitioner, H. Leslie Quigg, as Chief of Police of the City of Miami, was notified that some busses were beginning to congregate in and about the Court House and Police and Fire Stations at approximately 9:45 p.m., by Police Captain Hardy Bryan, commanding the police shift on duty at said time. This was approximately two and one-half (2½) hours before the streets were opened. Although Captain Bryan telephoned Quigg three times in fifteen minutes, he received no instructions or orders but Quigg informed the Captain that he would be down shortly[3] Quigg testified that he could have called three hundred sixty-eight (368) policemen in from fifteen to forty-five minutes but neglected to do so, and the Supreme Court of Florida commented upon this fact as further proof of his incompetency.

At approximately 10:30 p.m. the Petitioner, Quigg, arrived at the Police Station and closeted himself with the union bus driver leaders in his office[4] In the meantime, the streets were congested and obstructed by busses

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[1] Exhibit A, Vol. I, p. 190.
[2] Exhibit A, Vol. III, pp. 749, 750.
[3] Exhibit A, Vol. I, pp. 236, 237.
[4] Exhibit A, Vol. I, p. 238.

parked in violation of traffic ordinances of the City of Miami and the statutes of the State of Florida, and in view of Petitioner, but no orders were given by him to enforce the laws of either the City or the State. Newspaper photographers, one of whom was an ex-service man wounded in the Guadalcanal campaign, were forbidden by the union leaders and drivers from taking pictures on the public streets, reporters and photographers were threatened with physical violence by bus drivers in the presence of police, and were chased through the Police Station by bus drivers in an attempt to smash the newspaper cameras.[1] During the time Petitioner was closeted with the union leaders, one shift of police officers numbering approximately forty men, went off duty and another shift numbering approximately forty men came on duty. None of these men were ordered to stay at the scene of the strike or demonstration; nor was any general or emergency alarm sounded for other regular members of the Police Force or its reserves.[2]

Early in the meeting held between the union leaders and Petitioner Quigg, the City Manager of the City of Miami, A. B. Curry, who is the administrative head of the entire City government, arrived at the office of the Chief of Police where the latter was closeted with the Union President Frazier and Union Secretary Farlow. As the City Manager approached the door, W. O. Frazier, the Union President, jumped to his feet, and addressing the City Manager in the presence of Petitioner Quigg, said:

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[1] Exhibit A, Vol. I, pp. 81, 82, 83, 84, 221, 222, 223, and Vol. II, pp. 256, 257, 258, 259, 260, 261

[2] Exhibit A, pp. 239, 240.

"Now, there's your god-damn busses. Now what are you going to do with them?"[1]

The City Manager thereupon ordered Petitioner to arrest every man who was violating the law, and Petitioner admits having received the order.[2] This order was not obeyed, nor was any sincere effort made to do so. During the course of the conference in the office of Petitioner Quigg, W. O. Frazier, President of the Bus Drivers' Union, in the presence of Petitioner Quigg, referred to the Municipal Judge of the City of Miami, as a "conch son-of-a-bitch."[3]

Petitioner surrendered to the demands of the union bus drivers and brought about the release of the convicted bus driver on bond, and at approximately 12:10 a.m. the streets were cleared solely because the convicted bus driver appeared on the steps of the Court House in company with the union leaders, and upon an order having been given by W. O. Frazier, Union President, to the drivers to get the busses rolling because the convicted member of the union had been delivered from jail. No arrests were made by Petitioner Quigg and no attempt has been made by him to bring any law violators to justice.

On April 3, 1944, the City Manager of the City of Miami launched an investigation into the bus strike of March 29, 1944, requesting and receiving the assistance of its City Attorneys and the County Solicitor, Robert R.

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[1] Exhibit A, Vol. II, p. 291.
[2] Exhibit A, Vol. II, p. 291; Vol. III, p. 740.
[3] Exhibit A, Vol. I, pp. 71, 72.

Taylor. This was five days after the demonstration of March 29th and Petitioner still had made no effort to bring the law violators to justice. The investigation which lasted over one week revealed there was not even one record or scrap of paper in the police department revealing any laws had been violated or that there had ever been a strike or demonstration on March 29th! As a result of his investigation, the City Manager, on April 10, 1944, lodged nine charges of suspension against the Petitioner alleging neglect of duty, misfeasance, failure to obey orders as a consequence of the bus strike on March 29, 1944, and further bringing him before the Commission for incompetency publicly displayed because he had allowed a feud or quarrel which he had carried on for a period of years with his vice-squad subordinate, Lieutenant C. O. Huttoe, over gambling operations to disorganize and disunite the members of the Division of Police, dividing the Division of Police into camps, and in addition, with failing to establish proper and efficient police methods and procedures.[1] On the same date, the City Manager certified the suspension charges to the Commission of the City of Miami which, within five days, convened for the purpose of conducting a hearing upon the charges[2] The County Solicitor lodged numerous charges in the County Courts against the union leader, W. O. Frazier, and approximately ninety-five bus drivers for blocking public highways, etc. On February 13, 1946, they were convicted in the Court of Crimes, for Dade County, Florida, for violation of the state law.

The written charges of suspension against Petitioner Quigg were as follows:

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[1] Tr. pp. 3, 4, 14.

[2] Tr. pp. 5.

"1. You are guilty of neglect of duty by reason of your neglect and failure, as Chief of Police in the Division of Police of the City of Miami, Florida, to enforce the ordinances of said City and the criminal statutes of the State of Florida at the time of violations thereof committed in your presence and under your observation at and during the time of a strike of bus drivers in said City on the night of March 29, 1944.

"2. You are guilty of neglect of duty by reason of your neglect and failure, as Chief of Police in the Division of Police of the City of Miami, Florida, to give orders or instructions to the officers and other personnel of said Division of Police to enforce the ordinances of said City and the criminal statutes of the State of Florida, during or subsequent to the violations thereof committed at and during the time of a strike of bus drivers in said City on the night of March 29, 1944.

"3. You are guilty of misfeasance in the office of Chief of Police in the Division of Police of the City of Miami, Florida, by reason of the fact that, in violation of your oath of office, you devoted your time and your energies at and during the time of a strike of bus drivers in said City on the night of March 29, 1944, to meeting the demands of the leaders of the drivers, who were violating in your presence and under your observation the ordinances of said City and the criminal statutes of the State of Florida, and in aiding and abetting said leaders to effect the release from the City jail of a prisoner who had been lawfully convicted in the Municipal Court of said City and had been lawfully sentenced to imprisonment in said jail.

"4. You are guilty of neglect of duty by reason of your neglect and failure, as Chief of Police in

the Division of Police of the City of Miami, Florida, to cause or to bring about the apprehension, arrest and punishment of any or all of numerous persons who violated the ordinances of said City and the criminal statutes of the State of Florida at and during the time of a strike of bus drivers in said City on the night of March 29, 1944.

"5. You are guilty of neglect of duty by reason of your neglect and failure, as Chief of Police in the Division of Police of the City of Miami, Florida, to take any action or measures of any kind which would prevent at any future time a recurrence of a public emergency and of violations of law similar to those which prevailed at and during the time of a strike of bus drivers in said City on the night of March 29, 1944.

"6. You are guilty of failure to obey orders given by proper authority by reason of your neglect and failure, while serving as Chief of Police in the Division of Police of the City of Miami, Florida, to obey and carry into effect orders to enforce the traffic ordinances of said City, given to you by the City Manager of said City on the night of March 29, 1944, at and during the time of a strike of bus drivers in said City.

"7. You are guilty of incompetence as Chief of Police in the Division of Police of the City of Miami, Florida, by reason of the fact that you have permitted said Division of Police to fall into and be in a state of disorganization, disunity, discord and inefficiency.

"8. You have become and are unfit to serve as Chief of Police of the City of Miami, Florida, for the reason that you have lost and do not have the confidence and respect of the public of said City.

"9. Your acts of commission and of omission which are set forth and described in the above and foregoing grounds for your suspension, constitute conduct unbecoming a police officer of the City of Miami, Florida, and render you unfit to serve as Chief of Police in the Division of Police of said City."

The act of suspension by the City Manager was authorized under the provisions of Section 26, of the Charter of the City of Miami, which is Chapter 10847, Acts of 1925, of the Legislature of the State of Florida, which in part, reads as follows:

"The City Manager shall have the exclusive right to suspend the Chief of Police and Fire Chief for incompetence, neglect of duty, immorality, drunkenness, failure to obey orders given by proper authority, or for any other just and reasonable cause."

In conformity with subsequent provisions of said section of the City Charter, as hereinafter set forth, the City Manager forthwith certified the fact of suspension, together with the causes of suspension, to the Commission of the City of Miami, which within five (5) days from the date of receipt of such notice, proceeded to hear the charges and to render judgment thereon, under the terms of which the judgment is final:

"* * * If either of such chiefs be so suspended the City Manager shall forthwith certify the fact, together with the cause of suspension, to the Commission who within five (5) days from the date of receipt of such notice, shall proceed to hear such charges and render judgment thereon, which judgment shall be final."

At the commencement of the hearing held pursuant to the charter provisions hereinabove set forth, which continued for approximately nineteen (19) days, the Petitioner appeared in person, was represented by three attorneys, and was given full opportunity to present all witnesses, evidence and other matters which he deemed pertinent to his defense. Upon motion having been submitted by Counsel for Petitioner, the Commission ordered the City Attorneys of Miami to furnish a bill of particulars to Petitioner enumerating the numerous traffic ordinances violated, together with the names of the drivers participating, which order was complied with.[1] At the conclusion of the hearing the Commission of the City of Miami found the Petitioner guilty of charges numbered 1, 4, 7 and 9 and removed him from office.

After the removal of the Petitioner from office, as hereinabove recited, the Respondent, Charles O. Nelson, was lawfully appointed to the office of the Chief of Police of the City of Miami. Subsequent to the appointment of the Respondent, the Petitioner filed an action in Quo Warranto against the Respondent seeking to regain his office as Chief of Police. Circuit Judge Ross Williams, who had been attorney for Petitioner in an identical proceeding seeking his return to office after a prior removal from the same office, ordered his reinstatement. The Respondent directed an appeal from the latter order to the Supreme Court of the State of Florida upon numerous grounds. After extensive briefs had been filed by each of the parties hereto, and after oral argument had been made before the Supreme Court of Florida, com-

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[1] Exhibit A, Vol. I, pp. 21, 22, 23, 24, 34, 35, 36, 37, 38, 38A, 38B.

posed of seven (7) Justices, a unanimous decision was rendered reversing the decision of Circuit Judge Ross Williams. The decision of the Supreme Court of Florida declared that the suspension and removal of Quigg was in compliance with statutory requirements; found the Petitioner guilty of the charges which caused his dismissal by the Commission of the City of Miami, and declared said Petitioner unfit to hold the office of Chief of Police of the City of Miami. A copy of the unanimous decision by the Supreme Court of the State of Florida in favor of the Respondent herein, is attached hereto and appears in the appendix of this brief.

SUMMARY OF ARGUMENT

POINT A. The sole federal question attempted to be raised by Petitioner was with reference to Charge No. 7, dealing with his inefficiency and neglect of duty over a period of years, the decision of which was not necessary to the determination of this case by the Supreme Court of the State of Florida, because the decision of said Court was based almost exclusively upon Charges 1, 4 and 9 relating to the neglect of duty by Petitioner on March 29, 1944.

POINT B. In the removal of public employees the decision of a state court that the removal procedure was regular and under a constitutional and valid statute must generally be conclusive in the Supreme Court of the United States.

POINT C. Under Florida law, proceedings of the character under which Petitioner was removed from office is neither a judicial or quasi-judicial function but is ad-

ministrative and the formalities of a criminal prosecution or technical rules common to courts of justice are not applicable.

POINT D. An oath was administered to witnesses both for and against Petitioner by the Mayor of the City of Miami, presiding officer of its City Commission, even though there is no statute requiring the administration of an oath in proceedings of this character, and the Mayor had lawful authority to administer an oath.

POINT E. Petitioner has not shown that he was deprived of any constitutional right as a consequence of the removal of Charge Number 7 and its subsequent reinstatement.

POINT F. Commissioner Hosea who Petitioner attempted to disqualify on the ground of prejudice, denied any prejudice, the record reveals none, and there is no provision for the disqualification of a Commissioner in proceedings of this sort or for the qualification of a successor.

POINT G. Statutory requirement prescribing a two-third (2/3) vote to effect the removal of a municipal officer is applicable only where there is no provision in a municipal charter prescribing removal procedure such as is present in the Charter of the City of Miami.

ARGUMENT

POINT A. The sole federal question attempted to be raised by Petitioner was with reference to Charge No. 7, dealing with his inefficiency and neglect of duty

over a period of years, the decision of which was not necessary to the determination of this case by the Supreme Court of the State of Florida, because the decision of said Court was based almost exclusively upon Charges 1, 4 and 9 relating to the neglect of duty by Petitioner on March 29, 1944.

A study of the record in this cause together with the petition and brief of Petitioner reveals that the sole attempt to raise a federal constitutional question was made in his Quo Warranto Information filed in the local Circuit Court in which it was stated that the removal and the subsequent reinstatement of Charge No. 7 was a violation of Section 12 of the Declaration of Rights of the Florida State constitution and contrary to the Fourteenth Amendment of the Constitution of the United States. (Tr. 20) Charge No. 7 was but one of four charges upon which Petitioner was found guilty and removed from office by the Commission of the City of Miami, and had nothing to do with neglect of duty charges arising out of the occurrence of March 29, 1944. The Supreme Court of the State of Florida found the removal proceedings in conformity with statutory law on all four charges and that a full and complete hearing had been had. It was not necessary for a determination of this cause for the Supreme Court of the State of Florida to decide the purported federal question, and the judgment of this Court could have been rendered upon the three charges other than Charge No. 7. The decision of the Supreme Court of Florida is based almost exclusively upon the remaining three charges against Petitioner, to-wit, one (1), four (4) and nine (9) relating to the bus strike with but one reference to the substance and proof as to Charge No. 7.

"It is settled law that where the record discloses that the judgment of a state court was based not alone upon a ground involving a federal question, but also upon an independent ground of state procedure involving no federal question and broad enough to maintain the judgment, this court will not take jurisdiction to review such Judgement. * * *" **People ex rel. Doyle v. Atwell** (1923) 261 U. S. 590, 43 S. Ct. 410, 67 L. Ed. 814; **Eustis v. Bolles,** 150 U. S. 3611, 14 Sup. Ct. Rep. 131; **McCoy v. Shaw,** 48 S. Ct. 519, 277 U. S. 302, 72 L. Ed. 891; **Fox Film Corporation v. Muller,** 56 S. Ct. 183, 296 U.S. 207, 80 L. Ed. 158;**U. S. v. Hastings,** 56 S. Ct. 218, 296 U. S. 188, 80 L. Ed. 148; **Radio Station WOW v. Johnson,** 65 S. Ct. 1475;**Williams v. Kaiser,** 65 S. Ct. 363, 323 U. S. 471.

"* * * To give this Court jurisdiction of a writ of error to a state court it must appear affirmatively, not only that a Federal question was presented for decision but that its decision was necessary to the determination of the case, and that it was actually decided, or that the judgment as rendered could not have been rendered without deciding it."

Adams v. Russell (Mich. 1913) 229 U. S. 353, 33 S. Ct. 846, 57 L. Ed. 1224.

"* * * Yet if it also appears that the judgment of the state court against the plaintiff in error was based upon a question of general law broad enough to support the decision, this court will not consider the federal question, though it was considered and determined by the court below adversely to the plaintiff in error."

Consolidated Turnpike Co. v. Norfolk, Etc., R. Co. (Va. 1913) 228 U. S. 596, 33 S. Ct. 605, 57 L. Ed. 982.

Arkansas Southern R. Co. v. German Nat. Bank (Ark. 1907) 207 U. S. 270, 25 S. Ct. 78, 52 L. Ed. 201.

Decisions of state courts based on local laws not involving constitutional questions are not reviewable in the Federal Sureme Court.

Hibben v. Smith (Ind. 1903) 191 U. S. 310, 24 S. Ct. 88, 48 L. Ed. 195; **Smith v. Indiana** (Ind. 1903) 191 U. S. 138, 24 S. Ct. 51, 48 L. Ed. 125; **The Winnebago** (Mich. 1907) 205 U. S. 354, 27 S. Ct. 509, 51 L. Ed. 836;**Detroit, Etc., R. Co. v. Fletcher Paper Co.** (1918) 248 U. S. 30, 39 S. Ct. 13, 63 L. Ed. 107, affirming on other grounds (1917) 198 Mich. 469, 164 N. W. 528; **Palmer v. Ohio** (1918) 248 U. S. 32, 39 S. Ct. 16, 63 L. Ed. 108, dismissing writ of error to review (1917) 96 Ohio St. 513, 118 N. E. 102; **Hartford L. Ins. Co. v. Blincoe** (1921) 255 U. S. 129, 41 S. Ct. 276, 65 L. Ed. 549, affirming (1919) 270 Mo. 316, 214 S. W. 207, 12 A. L. R. 758; **Campbell v. Olney** (Tex. 1923) 262 U. S. 352, 43 S. Ct. 559, 67 L. Ed. 1021.

A party who has raised only one federal question in the state court cannot come into this court from a state court and argue the question thus raised, and also another not connected with it which was not raised in any of the courts below, and does not necessarily arise on the record, although an inspection of the record shows the existence of facts upon which the question might have been raised.

Dewey v. Des Moines (Iowa, 1899) 173 U. S. 193, 19 S. Ct. 379, 43 L. Ed. 665.

A federal question cannot be assumed to have been raised and passed on in a state court so as to give jurisdiction to the Supreme Court when nothing appears on the record to show on what grounds the decision of the matter in which the federal question is alleged to be involved was made.

> **Caperton v. Bowyer** (W. Va. 1871) 14 Wall. 216, 20 L. Ed. 882.

The claim in the state trial court that a ruling was contrary to the United States Constitution, 14th Amendment, affords no basis for a writ of error from the Federal Supreme Court, where no such contention was made in the assignment of errors in the highest court of the state, nor was it, so far as appears by the record, otherwise presented to or passed upon by that court.

> **Hiawassee River Power Co. v. Carolina-Tennessee Power Co.** (1920) 252 U. S. 341, 40 S. Ct. 330, 64 L. Ed. 729, dismissing writ of error to review (1918) 175 N. C. 668, 96 S. E. 99.

Petitioner did not raise his purported federal questions regarding the other three charges until his petition for rehearing was filed before the Supreme Court of Florida. The law is well settled that an attempt to raise federal questions on a petition for rehearing comes too late to support Certiorari proceedings in the Supreme Court of the United States.

> "The attempt to assign new errors in the petition for rehearing, which was overruled without an opinion passing on Federal questions cannot avail."

Waters-Pierce Oil Co. v. Texas (Tex. 1909) 212 U. S. 112, 29 S. Ct. 227, 53 L. Ed. 431.

The suggestion of a violation of a federal right, first made in a petition for the review, in the highest state court, of the judgment of an intermediate appellate court, is too late to serve as a basis for the exercise of the appellate jurisdiction of the Federal Supreme Court, where it does not affirmatively appear that the state court passed upon the federal question, and the denial of the petition may well have been upon the ground that the question, not having been suggested in the court below, could not be made available on appeal.

Chicago, Etc., R. Co. v. McGuire (Ind. 1905) 196 U. S. 278, 85 S. Ct. 200, 49 L. Ed. 413.

"* * * 'The claim under the Carmack Amendment was first set up and asserted in a petition for rehearing after the judgment in the trial court was affirmed by the Supreme Court of the state. The petition was not entertained, but was denied without passing upon the federal question thus tardily raised. That question, therefore, is not open to consideration here.'"

St. Louis, etc., R. Co. v. Shepherd (Okl. 1916) 240 U. S. 240, 36 S. Ct. 274, 60 L. Ed. 622.

A federal question first raised by a petition for a rehearing in the highest state court is too late to support the appellate jurisdiction of the Federal Supreme Court, where the state court, in denying the petition, made no reference to the federal question.

McMillen v. Ferrum Min. Co. (Colo. 1905) 197 U. S. 343, 25 S. Ct. 533, 49 L. Ed. 784.

The assertion that the Supreme Court of Florida committed error in sustaining Charges 1, 4 and 9 lodged against Petitioner because of his neglect, duty, and failure to enforce the municipal traffic ordinances and state law against blocking a public highway, because the provisions of the traffic code of the City of Miami permits a police officer to direct traffic contrary to the provisions of the Miami traffic code in cases of a fire or a traffic accident, etc., does not present a federal question. This also holds true when Petitioner asserts that the Supreme Court of Florida was in error when it held that a vote of three (3) of the Commissioners of the City of Miami was legally sufficient to remove Petitioner from office and that the oath administered by the Mayor of the City of Miami to witnesses for and against Petitioner was in conformity with State law. Purported errors of state courts in reviewing state statutes do not present federal questions.

The fact that the Supreme Court of Florida may have determined that the strike or demonstration of bus drivers, against whom Petitioner failed, neglected and refused to enforce the laws was a strike in the instant case, and when construing a particular state statute in the case of **State ex rel. Frazier vs. Coleman,** 23 So. (2d) 477, deciding that the Florida Labor Law was not violated by Frazier that night because it was no strike within the meaning of this labor act, confers no ground for federal jurisdiction. Petitioner fails to inform this Court that in the **Frazier vs. Coleman** decision the Supreme Court of Florida said the strike or demonstration * * * "was a lawless and contumacious act, directed against the

Municipal Court of Miami and its authority in defiance of law and order," Petitioner fails to inform this Court that in the earlier case of **State vs. Coleman,** 20 So. (2d) 911, the Supreme Court of Florida upheld one of our local Circuit judges in remanding Frazier to the custody of the Sheriff for violation of the state statute prohibiting obstruction of a highway. This charge against Frazier grow out of his activities on March 29, 1944, the night of the bus strike. On February 13, 1946, W. O. Frazier and some sixty-five bus drivers were convicted in the Court of Crimes for blocking public highways.

Decisions of state courts upon a question of law will not be reviewed in the Supreme Court of the United States as presenting a question of violation of the Fourteenth Amendment because such decisions are asserted to be wrong and contrary to previous decisions of the same Court.

Patterson v. Colorado (Colo. 1907) 205 U. S. 454, 27 S. Ct. 556, 51 L. Ed. 879, 10, Ann. Cas. 689.

"'A mere contest over a state office, dependent for its solution exclusively upon the application of the constitution of a state or upon a mere construction of a provision of a state law involves no possible federal question. Taylor v. Beckham (Ky. 1900) 178 U. S. 548, 20 S. Ct. 890, 1009, 44 L. Ed. 1187.'"

Elder v. Colorado (Colo. 1907) 204 U. S. 85, 27 S. Ct. 223, 51 L. Ed. 381, dismissing writ of error.

"* * * The states are left with a wide range of legislative discretion, notwithstanding the provisions of the Fourteenth Amendment to the Federal Con-

stitution, and their conclusions respecting the wisdom of their legislative acts are not reviewable by the courts."

Arizona Employers' Liability Cases (1919) 250 U. S. 400, 39 S. Ct. 553, 63 L. Ed. 1058, 6 A. L. R. 1537, affirming (1919) 19 Ariz. 151, 182, 166 P. 278, 1183, 165 P. 1101, 1185.

"* * * Save in exceptional circumstances, the United States Supreme Court must accept as controlling a decision of the state courts on questions of local law, both statutory and common.

American Ry. Express Co. v. Commonwealth of Kentucky (Ky. 927) 273 U. S. 269, 47 S. Ct. 353, 71 L. Ed. 639.

Petitioner has not been deprived of pension rights to this day and immediately after the decision of the Supreme Court of Florida went against him he filed an application for his pension allowance which has not been acted upon because of this litigation.

POINT B. In the removal of public employees the decision of a state court that the removal procedure was regular and under a constitutional and valid statute must generally be conclusive in the Supreme Court of the United States.

On Page 1 of the Opinion of the Supreme Court of the State of Florida in the present matter, appears the following language:

"* * * The City Charter of Miami authorizes such

action and prescribes the procedure to be followed. We find that there was a legally sufficient compliance with statutory requirements in every particular in connection with the hearing before the City Commission. As a result of this full and complete hearing, the City Commission removed Mr. Quigg from the office of Chief of Police."

The above excerpt from the decision of the highest appellate court in the State of Florida determines definitely that the removal proceedings of the Petitioner, H. Leslie Quigg, were held in conformity with the Constitution and Statutes of the State of Florida and in compliance with the charter provisions above recited.

"* * * No such fundamental rights were involved in the proceedings before the governor. In its internal administration the state (so far as concerns the Federal government) has entire freedom of choice as to the creation of an office for purely state purposes, and of the terms upon which it shall be held by the person filling the office. And in such matters the decision of the state court that the procedure by which an officer has been suspended or removed from office was regular and was under a constitutional and valid statute must generally be conclusive in this Court."

"* * * The procedure provided by a valid state law for the purpose of changing the incumbent of a state office will not in general involve any question for review by this court. A law of that kind does by providing for the carrying out and enforcement of a policy of a state with reference to its political and internal administration, and a decision of the state court in regard to its construction and validity will generally be conclusive here. The facts would have to be most rare and exceptional which will give

rights in a case of this nature to a Federal question. * * *"

Wilson v. State of North Carolina, ex rel. Caldwell, 169 U. S. 586, 18 S. Ct. 435, 42 L. Ed. 865.

It appears that ample provision has been made for the trial of the Petitioner before a court of competent jurisdiction; for bringing the party against whom the proceeding is had before the court, and notifying him of the case he is required to meet; for giving him an opportunity to be heard in his defense; for the deliberation and judgment of the court; for an appeal from this judgment to the highest court of the State, and for hearing and judgment there. A mere statement of the facts carries with it a complete answer to all the constitutional objections.

Kennard v. Louisiana (Morgan), 92 U. S. 480 (23:478).

A state statute regulating proceedings for the removal of a person from a state office is not repugnant to the Constitution of the United States as it provided for bringing the party against whom the proceeding was had into court, and notifying him of the case he had to meet; for giving him an opportunity to be heard in his defense and for the deliberation and judgment of the court.

John Foster, County Attorney of Saline County, Kansas, Plff. in Err., v. State of Kansas, ex rel. W. A. Johnston, Attorney General of the State of Kansas, 112 U. S. 205, (28:629)

POINT C. Under Florida law, proceedings of the

character under which Petitioner was removed from office is neither a judicial or quasi-judicial function but is administrative and the formalities of a criminal prosecution or technical rules common to courts of justice are not applicable.

In the case of **Jenkins vs. Curry,** City Manager, et al. reported in 18 So. (2d) 521, the principle of law applicable to the removal of public employees is announced in this language:

> "* * * In proceedings on hearing before a Miami Director of Public Safety on drunkenness charges against policeman, it was unnecessary to observe formalities in introduction of testimony in criminal prosecution or technical rules common to courts of justice."

In the case of **Owen vs. Bond,** 83 Fla. 495, 91 So. 686, we learn that the removal proceedings of public employees in the State of Florida are neither a judicial nor quasi-judicial function:

> "* * * The action of the City Council or City Commission of the City of Jacksonville in approving or rejecting the act of the mayor in suspending a person occupying the position of chief of police, is not a judicial or a quasi-judicial function."

Supporting the decisions hereinabove referred to are the following Florida cases:

Bryan vs. Landis, 106 Fla. 19, 142 So. 653.
Callahan vs. Curry, 153 Fla. 739, 18 So. (2d) 521.
State ex rel. Murray v. Lee, 4 So. (2d) 117, 148 Fla. 258.

POINT D. An oath was administered to witnesses both for and against Petitioner by the Mayor of the City of Miami, presiding officer of its City Commission, even though there is no statute requiring the administration of an oath in proceedings of this character, and the Mayor had lawful authority to administer an oath.

Petitioner has cited no statute, ordinance or regulation which requires the administration of an oath to witnesses in removal proceedings in the State of Florida. The administration of an oath is required in our criminal and civil courts. The Respondent believes however, that an oath should be administered in proceedings of this type in fairness to all parties concerned, and an oath was administered in the instant case by the Mayor of the City of Miami who is the presiding officer of its City Commission.

The Mayor was vested with the lawful authority to administer an oath. Under Section 165.06, Florida Statutes, 1941, the Mayor of a Florida municipality after having the oath administered to him, is given the power to administer oaths.

> "* * * And the mayor, upon being so qualified, shall administer to the aldermen and the other officers-elect the like oath, * * *"

Under Section 168.02, Florida Statutes, 1941, the Mayor of a Florida municipality is given the power to sit as a municipal judge and to administer oaths.

> "* * * The mayor may, * * * administer oaths, inquire and examine into the truth or falsity of such charge, * * *"

Under Section 14 of the Charter of the City of Miami, which is Chapter 10847, Acts of 1925, Statutes of Florida, the Commission, or any committee thereof, is empowered to investigate the official acts and conduct of any city official.

> "* * * In conducting such investigations the Commission, or any committee thereof, may require the attendance of witnesses and the production of books, papers and other evidence, * * *"

In Section 25 of the Charter of the City of Miami it is stated:

> "* * * The Director of Public Safety in any investigation shall have the same power to administer oaths and secure the attendance of witnesses and the production of books and papers as is conferred upon the Commission. * * *"

Under Section 41 of the Charter of the City of Miami, the Mayor and every Member of the Commission is affirmatively declared to have power and authority to administer oaths.

> "* * * The Commission shall constitute the Board of Equalization. * * * Any member of said board may administer an oath and examine witnesses in relation to the matters requiring investigation before the said board. * * *"

Thus it is seen that although the administration of an oath is not required by any statute of this State in proceedings of this character, an oath was in fact administered by the Mayor of the City of Miami to witnesses for the Prosecution and to witnesses for the De-

fense and the Mayor had the lawful right to administer an oath. The Supreme Court of the State of Florida passed upon the validity of this procedure and decided it was in conformity with law.

POINT E. Petitioner has not shown that he was deprived of any constitutional right as a consequence of the removal of Charge Number 7 and its subsequent reinstatement.

The authorities cited under Point C. as hereinabove set forth, should make it clear that under Florida law removal proceedings affecting public employees are administrative and are not subject to the niceties, technicalities and rigidity of the rules and laws governing procedure in criminal actions. All that is required is that substantial justice be done and that the defendant be permitted to present his defense to the accusations against him.

It was on motion of Counsel for Petitioner that Charge No. 7 was dismissed by the Commission without consent of the City Manager who preferred the charge. Counsel for Petitioner Quigg threatened to keep the hearing before the City Commission in session for weeks if Charge Number 7. was not removed[1] and threatened also to bring scandal upon many people in Miami, both living and dead,[2] if said Charge was not eliminated. The Commission disturbed by these threats removed the charge but after more deliberate thought and before any testimony was

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[1] Exhibit A, Vol. I, Pgs. 135, 137, 139; Vol. II, Pgs. 380, 381,412.

[2] Exhibit A, Vol. V, Pgs. 1072, 1073.

presented by Petitioner in his defense of any of the charges, the said Charge No. 7 was reinstated, evidence produced in support thereof, and the trial proceeded. If the Commission had the authority to remove said charge without the consent of the City Manager who preferred the charge, the Commission also had the right to reinstate the charge without the consent of the City Manager, so long as the Petitioner was not deprived of the right to face his accusers under said charge and to produce testimony in defense of the accusations. This was not a criminal proceeding. The Commission is the judge of its own procedure under Paragraph (e), Section 4 of the Charter of the City of Miami, which in part, reads as follows:

> "* * * The Commission may determine its own rules of procedure, may punish its own members for misconduct and may compel attendance of members. * * *"

> "* * * In so far as the legal weight and effect of administrative decisions of quasi-legislative or quasi-executive character is concerned, courts will not review such decisions for mere procedural errors or erroneous conclusions of fact, where the administrative agency, in arriving at a decision, violated no rule of law and record as entirety does not show abuse of delegated authority or arbitrary or unreasonable action."

State vs. Whitman, 116 Fla. 196, 150 So. 136.

In the case of **Etzler vs. Brown,** 58 Fla. 221, 50 So. 416, the Supreme Court of Florida sustained the removal of a detective by a municipal council who received daily reports of a detective used in the case while in executive session:

"* * * The action taken by the council, was publicly done and so recorded. The council was not trying the relator for the purpose of convicting him of a crime, and the strict rules of criminal procedure were not essential where no substantial rights of the relator were denied to him."

POINT F. Commissioner Hosea who Petitioner attempted to disqualify on ground of prejudice, denied any prejudice, the record reveals none, and there is no provision for the disqualification of a Commissioner in proceedings of this sort or for the qualification of a successor.

Nowhere does it provide in the Charter of the City of Miami a method or means for disqualifying any member of the Commission from acting in the event of the suspension of the Chief of Police, and no provision is made in the Charter for any City Commissioner to be appointed in the place or stead of one disqualified and to hear the charge as is the case in the disqualification of a judge. There is no provision in the general law of the State for the disqualification of a member of a commission. If members of the Commission could be disqualified by affidavit of prejudice, all members might be disqualified and a Chief of Police could never be tried. Disqualification of a judge is a judicial proceeding arising in a judicial hearing. The removal proceedings with which we are concerned was not a judicial hearing but was merely administrative.

"* * * If the charter creating a board makes no provision for disqualifying a member from acting in removal proceedings when he may be biased or prejudiced against the officer on trial, an objection to a member on that ground will not lie. Bias and prejudice on part of a commissioner not affecting his

judgment, will not disqualify him for hearing and determining charges against the chief of the department with a view to his removal."

McQuillin on Municipal Corporations, Vol. 2, 2nd Addition, Section 589, Page 366.

"* * * There being nothing in the general law of this State which would disqualify a member of the board to whom objection was made, and there being nothing in the act creating the board which would have this effect, then objection of the accused to the member sitting was proper overruled."

Tibbs vs. Atlanta, 125 Ga. 18, 53 S. E. 811.

POINT G. Statutory requirement prescribing a two-thirds (2/3) vote to effect the removal of a municipal officer is applicable only where there is no provision in a municipal charter prescribing removal procedure such as is present in the Charter of the City of Miami.

Counsel for the Petitioner rely upon the case of **State vs. Bloodworth,** 185 So. 1. This was a case in which the City Clerk of Miami was removed from office by the Commission of said City without charges and without a hearing and by the affirmative votes of but three members thereof. He was removed solely because he was about to certify as to the sufficiency of certain petitions which would initiate a recall against these same three (3) commissioners. Great public indignation prevailed because of this high-handed device employed by the three (3) Members of the Commission to keep themselves in office (these were the same three (3) Commissioners who placed Petitioner Quigg back in office after he had been removed

from office as Chief of Police on a prior occasion and his removal sustained by the Courts of the state).

Reading of the case reveals that the decision of the Supreme Court of Florida was based primarily upon the following factual situation:

1. No charges had been filed against the City Clerk.

2. The Clerk was not granted a hearing.

3. The attempted removal of the clerk was clearly for the purpose of preventing him from discharging the duties of his office.

4. There is no provision in the Charter of the City of Miami prescribing the method for the removal of its City Clerk.

Only this last point requires consideration now. For it was because the City Charter failed to provide a method for the removal of a City Clerk that the Supreme Court of Florida found it necessary to resort to the general law. The Court stated:

> "We find no provision in Chapter 10847, Special Acts of 1925, Laws of Florida, being the charter of the City of Miami giving the power or authority to the said City Commission to remove or discharge at will the clerk of said City. * * * In the absence of a provision of the charter of the City of Miami controlling the removal of its duly elected city clerk we therefore hold that the following general law applicable to all municipal corporations which control and guide the city commission of the City of Miami in the removal of its city clerk."

Ample provision is made, however, in the Charter of the City of Miami for the removal of its chief of police, and consequently there is neither reason nor legal justification in the instant case for recourse to or application to the general law referred to by the Supreme Court in the **State vs. Bloodworth** case. The procedure for the removal of the chief of police of the City of Miami is set forth in Section 26 of the City Charter, hereinabove set forth in the History of the Case section of this brief. Section 4 (e) of said City Charter provides that a majority of the members of the Commission may determine its own rules of procedure and that a majority of the members constitute a quorum to do business. Section 4 (f) prescribes how the Commission vote shall be recorded and that a majority, to-wit three (3) members thereof, may enact resolutions and ordinances. Pertinent portions of said Sections read as follows:

> "4 (e) A majority of all the members of the commission shall constitute a quorum to do business, but a smaller number may adjourn from time to time. * * *"

> "4 (f) Every ordinance or resolution shall require on final passage, the affirmative vote of a majority of all members. * * *"

The provisions of Sections 26, 4 (e) and 4 (f) of the Charter expressly empower the Commission to effect the removal of a chief of police by means of a resolution adopted by the affirmative vote of three (3) members of the Commission and these requirements were complied with meticulously by the Commission.

OBJECTIONS TO PRINTING ABBREVIATED RECORD

Counsel for Petitioner sought to stipulate with Counsel for Respondent for the printing of an abbreviated record. Portions which they sought to have eliminated could be material to the disposition of this cause in the event a Writ of Certiorari was granted. To illustrate, Counsel for Petitioner would have had us delete from the record the Bill of Particulars which we filed informing Petitioner of the numerous traffic ordinances of the City of Miami and the state laws which were violated in his presence on March 29, 1944, together with the names of the bus drivers and the numbers of the busses which were present at the strike or demonstration on said night. The Bill of Particulars also supplemented Charge No. 7, which has no relationship to the bus strike charges upon which Petitioner was removed, but revealed his incompetency, inefficiency and neglect of duty over a period of years. This Bill of Particulars supplemented and amplified the charges against Petitioner and were furnished to him upon order of the Commission of the City of Miami. If the Supreme Court of the United States should take jurisdiction of this cause it would be very necessary and proper that these specifications and particulars be contained in the record and for these reasons, Counsel for Respondent would not agree to their deletion.

Counsel for the Petitioner also wanted deleted from the record all testimony relating to Charge No. 7 which revealed the malfeasance, misfeasance and non-feasance of Petitioner over a period of some seven years. This Charge is unrelated to the bus strike situation, but was one of the charges upon which Petitioner was removed

from office, and which was sustained by the Supreme Court of Florida and this charge was commented upon by said Court in the following language:

> "* * * the charges, on which Chief of Police was convicted, accused him of neglect of duty * * * by reason of the fact, that he had permitted the police department to fall into a state of disorganization, disunity, discord and inefficiency."

This Charge No. 7 together with its Bill of Particulars, reveals clearly that Petitioner was not removed upon the basis of his neglect of duty on the night of the bus strike alone, but also because of all his sins of omission and commission over a period of years.

Counsel for Respondent, however, did present a stipulation to Counsel for Petitioner in which they agreed to eliminate substantial portions of the record. Counsel for Petitioner, however, would not agree to our stipulation.

CONCLUSION

WHEREFORE, Attorneys for Respondent respectfully request the Supreme Court of the United States to deny the Petition for Writ of Certiorari and to deny the Petition to Print an Abbreviated Record in the event the Writ of Certiorari should be granted.

Respectfully submitted:

J. W. WATSON, Jr.
JOHN M. MURRELL
Counsel for Respondent, and
for the City of Miami,
Court House, Miami, Florida.

APPENDIX

IN THE SUPREME COURT OF FLORIDA
JUNE TERM, A. D. 1945
EN BANC

CHARLES O. NELSON,
Appellant,
vs.
STATE OF FLORIDA, ex rel, H. LESLIE QUIGG,
Appellee

Opinion filed July 24, 1945

An Appeal from the Circuit Court for Dade County, Ross Williams, Judge,

J. W. Watson, Jr., Franklin Parson and John M. Murrell, for Appellant

G. A. Worley and Jack Kehoe and E. F. P. Brigham, for Appellee

HOBSON, CIRCUIT JUDGE

This case had its inception strictly as a judicial proceeding in the Circuit Court of the 11th Judicial Circuit in an action initiated by the filing of an information in quo warranto in the name of the State of Florida on relation of H. Leslie Quigg, Relator, and against Charles O. Nelson, Respondent. Its true genesis, however, was in a hearing before the City Commission of the City of Miami. This hearing was inaugurated by the City Manager and

had as its purpose the determination, as a matter of fact, of whether the charges filed against Quigg, the then Chief of Police of Miami, were true and required Quigg's removal from office. The City Charter of Miami authorizes such action and prescribes the procedure to be followed. We find that there was a legally sufficient compliance with statutory requirements in every particular in connection with the hearing before the City Commission. As a result of this full and complete hearing, the City Commission removed Mr. Quigg from the office of Chief of Police. Thereafter Charles O. Nelson was installed as Quigg's successor. The Circuit Judge in effect reversed the action of the City Commission by the entry of a judgment of ouster against the Respondent Nelson in the quo warranto proceedings.

Many questions have been posed for our consideration and to aid us in a proper determination of this controversy. We deem it sufficient to say that the answer to one of these questions is determinative of the case. As to all other assignments of error and questions presented, we find, upon an examination of the entire record, no harmful or prejudicial error.

The question which is determinative of this case on appeal (and it was before the Circuit Court in a proceeding in the nature of an appeal) may be stated in more than one form. We prefer to pose the query in the following verbiage—does a consideration of the record in its entirety disclose the ruling of the City Commission to be sustained by substantial evidence? We have held, and it seems to be an almost universal rule, that the findings of fact made by an administrative board, bureau, or commission, in compliance with law, will not be dis-

turbed on appeal if such findings are sustained by substantial evidence. (Hammond, L. G. v. City of Miami, Fla. 153 Fla. 245, 14 So. 2d 390; Jenkins v. Curry, City Manager et al., 18 So. 2d 521; Callahan v. A. B. Curry, 153 Fla. 739, 15 So. 2d 668; Marshall vs. Pletz, 317 US 383, 63 S. Ct. 284, 67 L. ed 348; Virginia Electric & P. Co. vs. National Labor Rel. Bd., 319 US 533, 63 S.Ct. 1214, 87 L ed 1568) The underlying and salient reasons for this safe and sane rule need not be repeated here. The fact that it is not the province of an appellate court to try cases de novo on a cold typed transcript is too elementary to require emphasis. This rule finds its counterpart in, if indeed it is not the twin brother of, the rule which requires an appellate court to give great weight to the findings of fact made by a jury or a chancellor and to sustain such findings unless there is no substantial evidence to support them. (See Broxson v. State, 99 Fla. 1187, 128 So. 628; Smith vs. Midcoast Inv. Co., 127 Fla. 455, 173 So. 348; Marcus vs. Hull, 142 Fla. 406, 195 So. 170)

The rule invoked herein is salutary and founded in good common sense and irrefutable logic. It should be adhered to religiously. The advent of the talking moving picture probably has given us a preview of a sound reason for its ultimate abolition. However, until this possible avenue of escape has been made adaptable to, and a requirement in, judicial proceedings, the rule should remain inviolate.

Upon a careful consideration of the complete record, we find that the ruling of the City Commission is sustained by substantial evidence. It was the failure of the learned Circuit Judge to apply the rule which we invoke herein which caused him to fall into error. It is not dif-

ficult, however, to understand how a Circuit Judge, whose daily work is predominantly fact finding in character, might easily overlook this rule.

It is unnecessary to a proper determination of this controversy to detail the evidence which was before the City Commission. It is appropriate, nevertheless, at this moment, when the members of our armed forces dice with death on the far-flung battle fronts and our form of government, indeed our very existence, is being challenged by a large portion of the peoples of the earth, to refer as briefly as possible to the unbelievable situation which developed and was attendant upon the Miami bus drivers' unwarranted, unofficial and unlawful strike. This incident, coupled with its ramifications as disclosed by the evidence, presented ample justification for the ruling made by the City Commission. The congregation of buses about the Court House in downtown Miami, which was brought about by the unauthorized orders and directions of certain leaders of the bus drivers' union, created a figurative coronary thrombosis at the very heart of the metropolitan area. All parties to this controversy agree that a grave situation existed. Counsel for Quigg contend that he exercised his discretion and best judgment and should not have been removed even if his course had not been productive of satisfactory results. This was Quigg's position before the City Commission.

But what course of conduct did Chief Quigg pursue? At the time of this strike he was the principal law enforcement officer of the City of Miami. Almost without exception every child of school age in America knows what the words "law enforcement officer" mean—one invested with the authority and charged with the duty to

enforce the law. It is that simple. No one denied the fact that multiple city ordinances were violated right and left by the bus drivers at the voluntary direction of the union leaders, particularly one Frazier. That such violations were known to the chief is not challenged and could not be consistently denied. No one with the normal human senses could have unwittingly overlooked them. But if he did so overlook them, he can find no comfort in that fact. Thereby his incompetence would have been clearly established.

During this strike, according to Quigg's own testimony, he could have called to his assistance three hundred sixty-eight policemen within fifteen to forty-five minutes. In addition, a change of police shifts took place at which time the outgoing police as well as the incoming ones could have been held and their combined number would have been sufficient to have eliminated at least the serious traffic hazard with its attendant grave potentialities.

In the face of this situation, the chief took only one step which even he might fairly consider affirmative conduct in line of duty. To one of his subordinates he said, "Keep cool and calm and keep the line of traffic open, if possible." To the Court this statement speaks for itself. It was more in the nature of an aside remark than a forceful command or direction. Moreover, the record fails to show either any serious effort to perform his duties or any proximate accomplishment thereof. Quigg was either incompetent, as aforementioned, or deliberate in the avoidance of his immediate duties. It appears that all the rest of his time and energies were devoted, not to law enforcement or official duties, but to a course of

conduct prescribed, required and demanded by the leaders of the bus drivers' union. His conduct can be best described by the word which has become known and accepted universally as a synonym for the surname Chamberlain.

Fault is not to be found so much with the Chief because he assisted in securing the release on bond of a bus driver who had been incarcerated lawfully, an act which to the most fantastic mind does not come within the purview of his official duties, but rather that he failed to perform his duties and became an appeaser to the extent that he knuckled under to the intimidating demands and requirements of those whose conduct evidenced the fact that they would supplant law and order with mob violence. Law enforcement officers cannot be so intimidated, cowed, overawed and swayed from their paths of duty if we are to preserve—that which throughout one hundred sixty-eight years of our national existence we, a body of free people, have fought, bled and died to preserve—the quasi Utopian dream of our forefathers which we now so proudly and poularly term "the American way of life."

The judgment of outster should be, and it is hereby reversed.

CHAPMAN, C. J., TERRELL, BROWN, BUFORD, SEBRING, J. J. AND SANDLER, CIRCUIT JUDGE CONCUR.

SANDLER, CIRCUIT JUDGE, CONCURRING:

I concur in the opinion prepared by Judge Hobson.

While this cause originated in the Circuit Court for the Eleventh Judicial Circuit, nevertheless, it brought for review and not for retrial the proceedings before the City Commission. It was not the province of the Circuit Court to retry the case on the record and substitute its judgment for the judgment of the City Commission, but it was the duty of the Circuit Court to review the proceedings to determine if the jurisdictional requirements were complied with and if the judgment of the City Commission found support in the record. That was the question there and is likewise the question here.

There were nine charges filed against the Chief of Police, two of which were quashed, he was acquitted on three and found guilty on four. The charges, on which the Chief of Police was convicted, accused him of neglect of duty by reason of his neglect and failure to enforce the Ordinances of the City of Miami and Criminal Statutes of the State of Florida; failure to bring about the apprehension, arrest and punishment of the persons who violated the said Ordinances and Statutes at and during the time of a strike by the bus drivers in the City on the night of March 29, 1944, and incompetence, as Chief of Police, by reason of the fact, that he had permitted the police department to fall into a state of disorganization, disunity, discord and inefficiency.

The defense in this case may be best summed up by the testimony of the Chief of Police himself, when he testified,

> "I didn't see anybody violate the law, and I didn't see anybody—I saw laws violated, cars parked after they were violated, so I didn't do anything." * * * "The

action I took I though was the best, because it was discretionary. I had the discretionary powers to use my best judgment in case of an emergency and I thought the easiest was the best, which proved to be."

With eighty-three buses congregated around the City Hall about ten o'clock at night, instead of complying with his oath of office to enforce the Ordinances and the Statutes, the Chief took the easiest way out and permitted the bus drivers to take over, one of whom in response to a question inquiring as to the nature of the trouble replied,

"The main issue is: Who is the biggest—the City Court Judge or 600 bus drivers."

There are times when discretion may be the better part of valor, but never at the expense of law and order.

When a government of men is substituted for a government of law liberty disappears and tyranny prevails. History now in the making has so clearly demonstrated this as to make comment unnecessary.

A careful study of the voluminous record in this case convinces me that not only is there substantial evidence in the record to support the findings and judgment of the City Commission, but that its judgment is entirely consistent therewith.